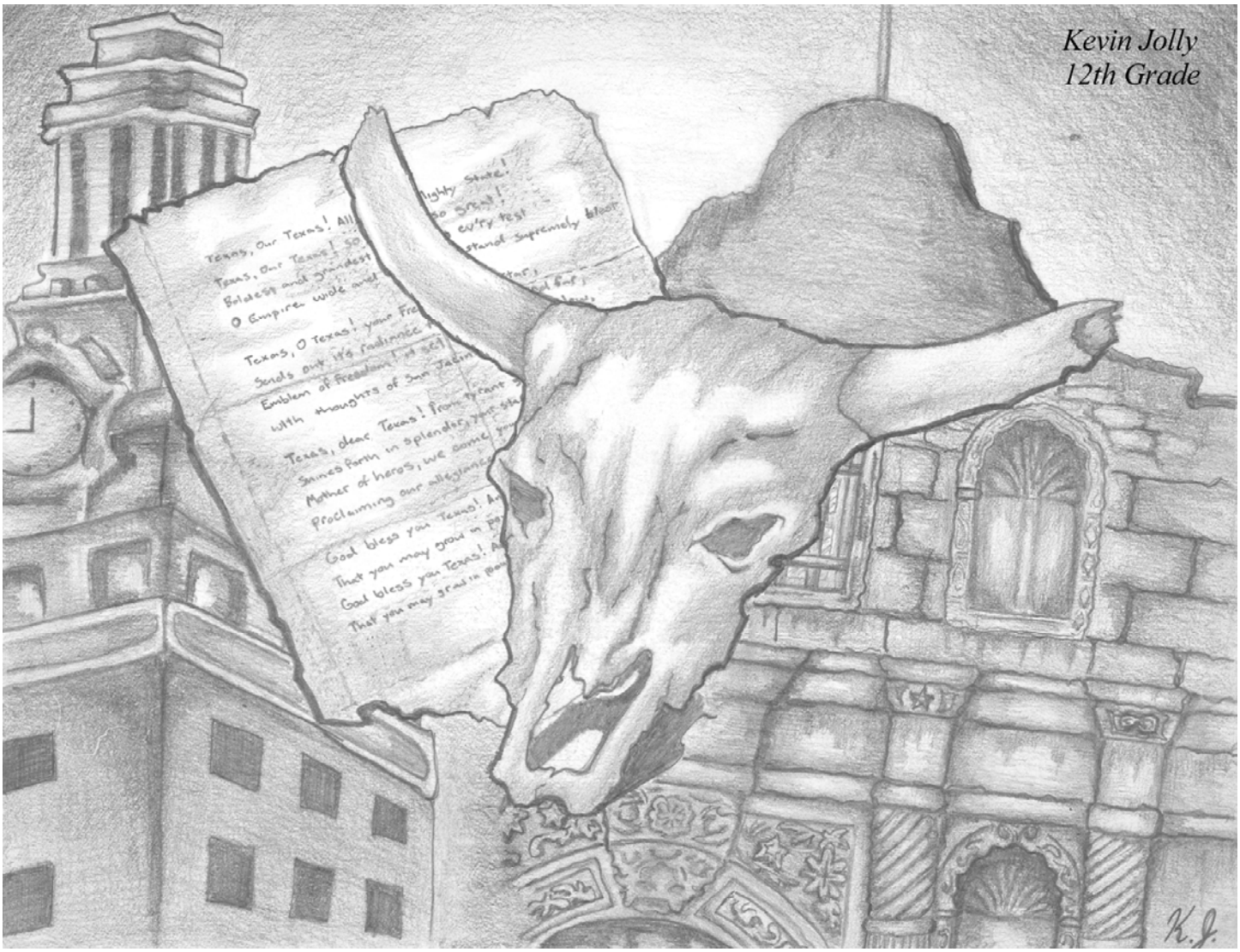
TEXAS REGISTER

Volume 33 Number 12 *March 21, 2008* *Pages 2411 - 2620*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 5, 2008

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2013, Stephen Pena of Georgetown (replacing J. Coulter Baker of Austin who resigned).

Appointed to the Public Safety Commission for a term to expire January 1, 2010, Carlton Thomas Clowe of Waco (New Position, pursuant to SB11, 80th Legislature, Regular Session).

Appointed to the Public Safety Commission for a term to expire December 31, 2013, Carin Barth of Houston (Replacing Ernest Angelo of Midland whose term expired).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2013, Thomas E. Oliver of Baytown (Mr. Oliver is being reappointed).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2013, David E. Young of Grand Prairie (Mr. Young is being reappointed).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2013, J. Russell Shannon of Andrews (replacing Fran Brown of Carrollton whose term expired).

Appointed to the Oil-Field Cleanup Fund Advisory Committee for a term to expire at the pleasure of the Governor, Douglas Saunders of Amarillo (replacing John Siebert Miller of Amarillo who resigned).

Rick Perry, Governor

TRD-200801386

♦ ♦ ♦

Proclamation 41-3143

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my January 29, 2008, proclamation, which declares a state of disaster in certain specified counties, to include: Anderson, Aransas, Austin, Bee, Bowie, Brazos, Cameron, Dallam, Dallas, Fayette, Freestone, Galveston, Grimes, Hardin, Harrison, Hartley, Henderson, Jasper, Leon, Newton, Ochiltree, Panola, Sabine, Scurry, Shackelford, Sherman, Smith, Titus, Tyler and Upshur Counties, certifying that these counties are currently threatened by extreme fire hazard.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 15th day of February, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200801370

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Proclamation 41-3144

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that 216 counties in Texas are threatened by extreme fire hazard. Dry frontal passages pose significant fire danger because of the large amount of cured grass across the state. This threat exists in the following counties in Texas:

Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, LaSalle, Lamar, Lamb, Lampasas, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Waller, Ward, Washington, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew my January 29, 2008, proclamation and declare a state of disaster in the counties listed above based on the existence of such threat, and direct

that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 28th day of February, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200801371

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0682-GA

Requestor:

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

Navarro County Courthouse

300 West 3rd Avenue, Suite 203

Corsicana, Texas 75110

Re: Legal status of a particular county road near the boundary of two counties (RQ-0682-GA)

Briefs requested by April 7, 2008

RQ-0683-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether school districts and charter schools must in each grade 9 through 12 comply with subsection 28.011(a) Education Code, which relates to elective courses providing academic study of the Bible (RQ-0683-GA)

Briefs requested by April 10, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801409
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 12, 2008

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER B. MEDICARE ADVANTAGE PLANS, MEDICARE ADVANTAGE PRESCRIPTION DRUG PLANS, AND MEDICARE PART D PLANS

28 TAC §§19.101 - 19.104

The Texas Department of Insurance is renewing the effectiveness of the emergency adoption of new §§19.101 - 19.104, for a 60-day period. The text of the new sections was originally published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8389).

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801352
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Original Effective Date: November 9, 2007
Expiration Date: May 6, 2008
For further information, please call: (512) 463-6327

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

The Texas Judicial Council (the Council) proposes to repeal §171.1 and §171.2 and adopt new §§171.1 - 171.6 regarding requirements for reporting the activity of the courts of Texas. The repealed sections require the use of printed forms to be mailed to the Council, and do not specify the detailed information required by the Council. As the activity of the courts has changed over the decades that the existing forms have been used, the Council seeks to capture current court activity and improve data collection. The new rules require electronic submission unless a waiver is granted, and specify details of the information to be captured in the proposed new forms. The proposed forms and instructions may be found on the Council's website under the activities of the Committee on Judicial Data Management at http://www.courts.state.tx.us/tjc/cte-active.asp.

Although the rules will be adopted by the Council in 2008, the courts will not be required to report the data required by the new rules until September 1, 2009, which will allow time to implement any required changes to their systems.

Glenna Bowman, chief financial officer of the Office of Court Administration (OCA), has determined that for each year of the first five-year period the new sections are in effect, there will be fiscal implications for the state as a result of enforcing or administering the rule as proposed. The OCA will be required to devote technical staff to rebuilding the architecture of its data-receiving systems, but will utilize existing resources to do so. Fiscal implications for local governments as a result of compliance with the sections will depend on: (1) the existence and terms of any contract with a case management system vendor concerning implementation of changes in reporting case activity information to OCA; and (2) the level of sophistication of the government's current case management system and the degree to which changes will need to be made.

Mary Cowherd, deputy director for research and court services with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be: (1) clarity in what is required by law for reporting case activity; and (2) a repository of information that more accurately reflects the workloads of the state's trial courts and that is more useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Mary Cowherd, deputy director of research and court services with OCA, at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to rulecomments@courts.state.tx.us.

1 TAC §171.1, §171.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Judicial Council or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court. No other statutes, articles, or codes are affected by these sections.

§171.1. Monthly Reports.

§171.2. Within 20 Days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2008.

TRD-200801357
Margaret Bennett
General Counsel for Office of Court Administration
Texas Judicial Council
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-6321

♦ ♦ ♦

1 TAC §§171.1 - 171.6

The new sections are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court. No other statutes, articles, or codes are affected by these sections.

§171.1. Authority to Adopt and Purpose of Rules.

These rules are adopted under the authority granted by §71.019 of the Texas Government Code, which authorizes the Texas Judicial Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

§171.2. General Reporting Requirements.

District clerks, county clerks, justices of the peace, and municipal judges shall submit a summary-level court activity report each month to the Office of Court Administration (OCA) using the methods required by this chapter no later than 20 days following the end of the month reported. OCA shall maintain and update reporting instructions and forms initially approved by the Texas Judicial Council, and shall continually make the instructions and forms available by publishing them on its website and by other appropriate means.

§171.3. Types of Cases to be Counted and Reported.

(a) Criminal cases. Criminal cases include felony and misdemeanor cases. The number of criminal cases to be reported is based on the number of defendants named in the charging instrument. If a single charging instrument names more than one defendant, it is counted as more than one case. If the same defendant is charged in more than one charging instrument, it is counted as more than one case. If a charging instrument contains more than one count as provided by Article 21.24, Code of Criminal Procedure, it is reported as one case under the most serious offense alleged.

(b) Civil cases. Civil cases are counted and reported when an original petition is filed (no matter how many parties are involved) or when a case is added to the docket in a manner other than the filing of a new, original case, including but not limited to the following: the granting of a motion for new trial of a case previously disposed of; the transfer of a case from another county on change of venue; the remand of a case that had been appealed; the granting of a severance; and the docketing of a writ of garnishment or bill of review.

(c) Family law cases. Family law cases are counted and reported when an original petition is filed (no matter how many parties or children are involved), when a show cause motion, motion to modify, or similar motion is filed following entry of original judgment, or when any other case is filed under the Texas Family Code.

(d) Juvenile cases. Juvenile cases are counted and reported based on the number of respondents named in a petition for adjudication of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision, as governed by Title 3 of the Texas Family Code. If the same respondent is charged in more than one petition, it is counted as more than one case. If one petition contains more than one count, it is counted as one case under the most serious offense alleged.

(e) Probate and guardianship cases. Probate and guardianship cases are counted and reported based on the number of proceedings filed or heard each month.

(f) Mental health cases. Mental health cases are counted and reported based on the number of applications filed or hearings held each month.

§171.4. District Court Reports.

(a) Method. The district clerk of each county shall submit a district court activity report of the criminal, civil, family law, and juvenile cases in the county's district courts. A separate report may be submitted for each district court or a single report may be submitted showing the combined activity of all the district courts in the county. Unless OCA grants a waiver for good cause, the district clerk shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of felony case types: capital murder, murder, other homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies; and a misdemeanor case type category for all misdemeanors.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, injury or damage - medical malpractice, injury or damage - other professional malpractice, injury or damage - asbestos/silica product liability, injury or damage - other product liability, other injury or damage, real property - eminent domain, other real property, contract - consumer/commercial/debt, other contract, other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce - children, divorce - no children, parent/child - no divorce, child protective services, termination of parental rights, adoption, protective orders - no divorce, Title IV-D - paternity, Title IV-D - support order, and Title IV-D - UIFSA, all other family law cases, and post-judgment actions for modification - custody, modification - other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for cases on docket, dispositions, and additional court activity section.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for conduct indicating a need for supervision (C.I.N.S.) cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions, and additional court activity.

§171.5. Statutory County Court Reports.

(a) Method. Each district clerk or county clerk who maintains the records for the statutory county courts (including statutory probate courts) of a county shall submit a court activity report of criminal, civil, family law, juvenile, probate and guardianship, and mental health cases for these courts. A separate report may be submitted for each statutory county court or a single report may be submitted for all statutory county courts in the county. Unless OCA grants a waiver for good cause, the clerk shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report for criminal cases is divided into sections for misdemeanors and felonies.

(i) Misdemeanor case types. The report contains the following categories for reporting misdemeanor cases: D.W.I. - first offense, D.W.I. - second offense, theft, theft by check, drug possession - marijuana, drug offenses - other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(ii) Felony case types. The report contains the following categories for reporting felony cases: capital murder, murder, other felony homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information, and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, injury or damage - medical malpractice, injury or damage - other professional malpractice, injury or damage - asbestos/silica product liability, injury or damage - other product liability, other injury or damage, real property - eminent domain, other real property, contract - consumer/commercial/debt, other contract, all other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce - children, divorce - no children, parent/child - no divorce, child protective services, termination of parental rights, adoption, protective orders - no divorce, Title IV-D - paternity, Title IV-D - support order, Title IV-D - UIFSA, all other family law cases, and post-judgment actions for modification - custody, modification - other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting juvenile case activity for cases on docket, adjudications, dispositions and additional court activity.

(5) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates (independent administration, dependent administration, and all other estate proceedings), guardianships (minor and adult), and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(6) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification - inpatient to outpatient, modification - outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains activity report categories for intake, hearings, and other information.

§171.6. Constitutional County Courts Reports.

(a) Method. County clerks shall submit a court activity report of criminal, civil, juvenile, probate and guardianship, and mental health cases for each constitutional county court. Unless OCA grants a waiver for good cause, county clerks shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of misdemeanor case types: D.W.I. - first offense, D.W.I. - second offense, theft, theft by check, drug possession - marijuana, drug offenses - other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information, and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, other injury or damage, real property, contract - consumer/commercial/debt, contract - landlord/tenant, and other contract, and all other civil cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions, and additional court activity.

(4) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates - independent administration, decedents' estates - dependent administration, and all other decedents' estate proceedings, guardianships - minor, guardianships - adult, and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(5) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification - inpatient to outpatient, modification - outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains the activity report categories for intake, hearings, and other information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2008.

TRD-200801358
Margaret Bennett
General Counsel for Office of Court Administration
Texas Judicial Council
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-6321

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT

The Texas Department of Agriculture (the department) proposes the repeal of Chapter 29, Subchapter B, §§29.20 - 29.25 and 29.30 - 29.32, concerning the department's Texas Yes! Program rules, and the addition of new Chapter 29, Subchapter B, §§29.20 - 29.33, providing for the new GO TEXAN Rural Community Program (the Program) and use of the GO TEXAN certification mark in conjunction with this Program. The department is repealing the Texas Yes! Program rules in order to establish a similar, new program to support and promote Texas' rural communities. The department has a highly successful GO TEXAN certification mark (the mark) used to designate Texas products and certified retirement communities and the department will utilize a like certification mark for rural communities who meet specific eligibility requirements to capitalize on the name recognition associated with that mark. New §29.20 states the purpose of the Program. New §29.21 provides the Program's definitions as used in the new rules. New §29.22 provides for the department's administration of the program. New §29.23 provides the eligibility and application requirements for becoming a certified member of the Program. New §29.24 provides the eligibility and application requirements for becoming an associate member in the Program. New §29.25 provides the process for submission and review of applications and new §29.26 explains how an application determination can be appealed. New §29.27 provides the reasons for which an application may be denied. New §29.28 provides for the registration of those applicants who are approved to use the Mark and new §29.29 provides guidelines for use of the Mark, generally. New §29.30 provides for the termination or revocation for a license to use the Mark. New §29.31 describes the benefits of membership available to each certified or associate members. New §29.32 provides the membership expiration timeline and membership renewal guidelines. New §29.33 provides for the continued use of the "Texas Yes!" beyond the termination date of the program rules.

Rick Rhodes, assistant commissioner for rural economic development, has determined that for the first five-year period the proposed amended are in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the new sections.

Mr. Rhodes has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections will be an increase in economic activity in rural Texas communities due to the name recognition of the GO TEXAN certification mark, by providing communities with a more effective tool to market and promote themselves as a desirable rural community or travel destination. There will be no cost to micro-businesses or small businesses, since eligibility for the certified membership in the Program is limited to units of local government. Businesses are eligible to apply for associate membership in the Program, and may incur minimal costs to apply. There will be no application fee.

Comments may be submitted to Rick Rhodes, Assistant Commissioner for Rural Economic Development, P. O. Box 12847, Austin, Texas 78711. Comments must be receive no later that 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER B. "TEXAS YES!" PROGRAM RULES

DIVISION 1. GENERAL RULES

4 TAC §§29.20 - 29.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §§29.20 - 29.25 is proposed under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§29.20. Statement of Purpose.

§29.21. Definitions.

§29.22. Administration.

§29.23. Eligibility for Community, Business and Associate Membership.

§29.24. Application for "Texas Yes!" Membership.

§29.25. Benefits of "Texas Yes!" Membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2008.

TRD-200801289
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-4075

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DIVISION 2. USE OF THE "TEXAS YES!" MARK

4 TAC §§29.30 - 29.32

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §29.30 - 29.32 is proposed under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§29.30. Use of the "Texas Yes!" Mark.

§29.31. Termination of License to use the "Texas Yes!" Mark.

§29.32. Registration of Those Entitled to Use the "Texas Yes!" Mark.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2008.

TRD-200801290
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-4075

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SUBCHAPTER B. GO TEXAN RURAL COMMUNITY PROGRAM RULES

4 TAC §§29.20 - 29.33

New §§29.20 - 29.33 are proposed under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§29.20. Statement of Purpose.

The GO TEXAN Rural Community program is designed to support and increase economic activity and businesses in rural Texas communities.

§29.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person submitting application for GO TEXAN Rural Community certified membership or associate membership.

(2) Application--Written request for GO TEXAN Rural Community certified membership or associate membership in the format required by the department.

(3) Associate member--A person who wishes to support rural communities in Texas and who is granted limited GO TEXAN Rural Community membership and limited rights to use the mark to support a rural community eligible to apply for a GO TEXAN Rural Community certified membership.

(4) Certified member--Any community that is granted a GO TEXAN Rural Community certified membership and is either a non-metropolitan county, or a Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more and actively engages in community improvement as set forth in §29.23(b) and (c) of this title (relating to Eligibility for Certified Membership; Associate).

(5) Commissioner--The Commissioner of the Texas Department of Agriculture.

(6) Department--The Texas Department of Agriculture.

(7) Guidelines--Guidelines promulgated by the department for completing the application for the program and administration of the program.

(8) Licensee--An applicant approved for GO TEXAN Rural Community certified or associate membership and authorized to use the GO TEXAN Mark.

(9) Mark--The GO TEXAN certification mark, consisting of "GO TEXAN" and Design. The mark is pending final registration approval with the United States Patent and Trademark Office.

(10) Non-metropolitan county--A Texas county that is not located in or does not encompass a metropolitan statistical area, as identified by the U.S. Census.

(11) Person--An individual, firm, partnership, corporation, governmental entity, cooperative organization, or association of individuals.

(12) Program--The GO TEXAN Rural Community Program.

§29.22. Administration.

The department's responsibilities under this subchapter are as follows.

(1) The department shall develop a general promotional campaign for rural Texas communities.

(2) Department staff shall review applications for membership eligibility.

(3) The department may accept gifts, grants, donations, or other funding from state and federal governmental entities to be used for purposes of administering this chapter.

(4) Department staff shall establish guidelines on advertising or promotional activities for certified members and associate members that use the mark.

§29.23. Eligibility for Certified Membership; Application.

(a) Any non-metropolitan county, or any Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more, is eligible for GO TEXAN Rural Community certified membership.

(b) An application for certification must include the following:

(1) an overview of applicant's community, including demographics and geography, and to the extent applicable the applicant community's:

(A) major employers;

(B) major highways;

(C) continuing education; and

(D) recreational areas and facilities.

(2) The type of community improvement performed and the applicant's mission and goals as they relate to:

(A) community development;

(B) economic development;

(C) tourism;

(D) cultural or historical heritage preservation; or

(E) strategic planning related to subparagraphs (2)(A) - (D) of this subsection.

(3) Information on an activity, event, festival or project (either recent or planned) that addresses the applicant's strategy to accomplish its mission and goals.

(c) The department has the sole authority to determine whether a community is eligible for a GO TEXAN Rural Community certified membership.

§29.24. Eligibility for Associate Membership; Application.

(a) The GO TEXAN Rural Community Program associate membership is established to provide membership to allow persons/entities interested in assisting the department with the promotion and implementation of the GO TEXAN Rural Community program use of the mark only on promotional items that meet standards and rules, as developed by the department.

(b) Any of the following types of entities are eligible for GO TEXAN Rural Community associate membership:

(1) A person that wishes to support a rural community that would be eligible to apply under §29.23 of this title (relating to Eligibility for Certified Membership; Application); or

(2) A sole proprietor, partnership, cooperative organization or corporation, whose principal place of business is in Texas and who has a business location in:

(A) A non-metropolitan county as defined in §29.21(10) of this title (relating to Definitions);

(B) An unincorporated area; or

(C) A Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more; or

(3) An economic development corporation, chamber of commerce, visitors bureau or other similar entity that supports a rural community that would be eligible to apply under §29.23 of this title.

(c) Application for associate membership shall be made in accordance with this section, and in the same manner as provided in §29.23 of this title. The application must include information identifying the rural community the applicant supports and information on how the applicant supports the rural community.

(d) Eligible entities, interested in assisting the department with the promotion and implementation of the GO TEXAN Rural Community program may apply for GO TEXAN Rural Community associate membership.

(e) The following limited use restrictions shall apply to an associate member's use of the mark.

(1) Licensee shall only use the mark for the limited purpose stated in the license agreement. Use of the mark by associate members is limited and use is subject to department rules.

(2) Licensee shall be granted a limited, non-exclusive license to use the mark solely in conjunction with the reproduction, display, advertisement and promotion for which licensee has applied, within the United States, on the date(s) which licensee specified in the application.

(3) Licensee, upon request by the department, shall furnish a sample of any material bearing the mark, including but not limited to all advertising, promotional, and display materials, at no charge, for the department's written approval prior to any use thereof.

(4) At the direction of the department, Licensee shall affix on all items utilized in the licensed use, appropriate legal notices, as follows: "GO TEXAN and Design is a certification mark of, and is used under license from, the Texas Department of Agriculture".

(5) Licensee's license to use shall not be construed to grant or assign any right, title or interest in or to the mark or the goodwill attached thereto.

(6) Any and all use of the mark by licensee as allowed under program rules shall inure solely to the benefit of the department.

(7) Printers' and media companies' use of the mark is limited to reproduction of the mark for use by program members on their advertising, promotional and/or display materials.

(f) The department has the sole authority to determine whether an applicant is eligible for a GO TEXAN Rural Community associate membership.

§29.25. Application Submission and Review.

(a) Applications for "GO TEXAN Rural Community" certified or associate membership shall be made in writing on a form prescribed by the department. Program guidelines and application forms may be obtained via the department's Web site at www.tda.state.tx.us or by

contacting the Texas Department of Agriculture at P.O. Box 12847, Austin, Texas 78711.

(b) Applications shall be submitted to the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(c) Within 30 days of receipt of an application for "GO TEXAN Rural Community" certified membership or associate membership, the department shall grant or deny the application and forthwith notify the applicant in writing of the decision setting forth in detail the reasons for such grant or denial.

(d) The Commissioner or his designee may deny an application for GO TEXAN Rural Community certification or associate membership if:

(1) the application is not made in compliance with these rules;

(2) the applicant does not meet the eligibility requirements set forth in these rules; or

(3) for any other reason.

§29.26. Appeal of Application Determination.

(a) If the applicant wishes to contest an initial determination made in accordance with §29.25 of this title (relating to Application Submission and Review), notice of protest shall be filed by the applicant with the commissioner within 15 days of receipt by the applicant of notice of such initial determination. The date of notification is the date the notice was mailed by first class mail. Should notice of protest be timely filed, the applicant's request shall be administered as a contested case as provided for the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Procedures).

(b) If notice of protest has not been filed with the commissioner within 15 days of receipt by the applicant of notice of such initial determination, such initial determination shall become final.

§29.27. Denial of Application.

An application for certified or associate membership may be denied if:

(1) Application is not made in compliance with §29.23 and/or §29.24 of this title (relating to Eligibility for Certified Membership; Application and Eligibility for Associate Membership; Application).

(2) The applicant cannot provide adequate assurances that the rural community for which application is made qualifies and will continue to qualify for the program(s) in which it is enrolled.

(3) The applicant has misused the mark prior to the date of application; or

(4) Applicant's use of the mark would either:

(A) impair or frustrate the department's efforts to certify, expand or encourage development of the rural communities in Texas; or

(B) fail to enhance the integrity and image of the program, as determined by the department; or

(5) for other reasons, as determined appropriate by the department.

§29.28. Registration of Those Entitled to Use the Mark.

(a) The Commissioner shall maintain a list of the names of all certified members and associate members granted permission under these sections to use the mark. The list shall be available upon request for public inspection during normal business hours in the offices of the Texas Department of Agriculture, 1700 North Congress Avenue, in Austin, Texas.

(b) Procedure for renewal of licensees authorized to use the mark, which shall be made every three years.

(1) Forty-five days before the expiration date of the registration the department shall mail to each licensee a renewal application.

(2) Within 30 days of receipt by the department of the renewal application, the department will mail to the licensee a renewal license agreement.

(3) Failure to remit the renewal application by the due date shall result in the licensee being designated as inactive. Failure to remit renewal application within 366 days of the due date shall result in the expiration of the license and a new application for certified membership or associate membership will be required for re-instatement to the program.

§29.29. Use of the Mark.

A licensee's use of the mark shall comply with the following.

(1) Upon approval of an application, the department shall mail to the licensee a license agreement, which is valid for three years and shall expire on the last day of the month corresponding to the license anniversary date. The department shall also provide copies of the mark, suitable for reproduction.

(2) Other than the use of the mark, no licensee shall use any statement of affiliation or endorsement by the State of Texas or the department in the advertising, marketing or other commercial use of the certification mark.

(3) Licensees shall indemnify and hold harmless the commissioner, the State of Texas, and the department for any claims, losses, or damages arising out of or in connection with the person's/communities advertising, marketing or other commercial use of the mark.

(4) Any permission under the license agreement granted to a licensee to use the mark shall be nonexclusive and nontransferable by the licensee listed in the application.

(5) Licensees shall do nothing inconsistent with the ownership of the mark in the department, and all use of the mark by any licensee shall inure to the benefit of and be on behalf of the department. Further, the licensees shall not have any right, title, or interest in the mark, other than the right to use the mark in accordance with the license agreement. Licensees must agree not to attack the title of the department to the mark, or attack the validity of the license agreement or the permission granted by the department.

(6) The nature of the rural communities that will be advertised or marketed by licensees in connection with the mark shall conform to any standards that may be set from time to time by the department. Licensees shall cooperate with the commissioner by supplying the commissioner with specimens of use of the mark upon request.

(7) Licensees shall comply with all applicable laws and regulations and obtain all appropriate governmental approval pertaining to the advertising, marketing or other commercial use of the mark.

(8) Licensee shall use the mark only in the form and manner, and with appropriate legends, as prescribed from time to time by the commissioner. At the direction of the department, Licensee shall affix on all items utilized in the licensed use, appropriate legal notices, as follows: "GO TEXAN and Design is a certification mark of, and is used under license from, the Texas Department of Agriculture".

(9) The department shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the mark.

(10) The department may consider in its evaluation of an applicant or licensee any information regarding an applicant or member that could impair the department's efforts to promote the development of rural communities.

(11) The consideration of information as provided in paragraph (10) of this section may include consideration of any information that may not enhance the integrity and positive image of the program, including, but not limited to, a review of criminal information, as allowed by applicable laws and regulations.

(12) A Licensee shall be prohibited from modifying the mark, as found in the license agreement, for use in any way.

§29.30. Termination of Registration and License To Use the Mark.

(a) Authorization and license to use the mark may be revoked at any time if the department determines that a licensee has misused the mark.

(b) Misuse of the mark includes, but is not limited to:

(1) Use of the mark in the advertising, marketing or other commercial use for which registration to use the mark has not been granted by the department;

(2) Use of the mark in the advertising, marketing or other commercial use which is of a quality markedly inferior to that representative of similar rural community located in Texas; or

(3) Use of the mark would either:

(A) Impair or frustrate the department's efforts to certify, expand or encourage development of the rural communities located in Texas; or

(B) Fail to enhance the integrity, and image, or mission of the program, as determined by the department;

(4) Use of the mark in a manner violating any rule promulgated by the commissioner.

(5) The department may revoke license to use the mark if a certified member or associate member fails to comply with program guidelines.

(c) Proceedings for the revocation of a license to use the mark shall be conducted in the manner provided for contested cases by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Procedures).

(d) A proceeding for revocation of a license to use the mark shall not preclude the commissioner from pursuing any other remedies, including, where applicable, the penal and injunctive remedies provided for by law.

§29.31. Benefits of Membership.

(a) GO TEXAN Rural Community Program certified members will receive the following benefits:

(1) Use of the mark on promotional materials to indicate certification and participation in the GO TEXAN Rural Community Program campaign promoting rural Texas and to take advantage of the visibility of the GO TEXAN program.

(2) Receipt of the GO TEXAN Rural Community Program newsletter containing information and news of interest and use to rural communities.

(3) Regular e-mail updates with timely information on workshops, resources and agencies or organizations focused on rural development.

(4) Inclusion in the GO TEXAN Rural Community Program database.

(5) A link on the GO TEXAN Rural Community Program web site.

(6) Eligibility to participate in the Hometown STARS and Bootstrap Bucks grant programs.

(7) Eligibility for the Hardworking Rural Community award and recognition.

(b) GO TEXAN Rural Community Program associate members will receive the following benefits:

(1) Use of the mark on promotional materials to indicate support of a rural community eligible to apply under §29.23 of this title (relating to Eligibility for Certified Membership; Application) and participation in the GO TEXAN Rural Community Program campaign promoting rural Texas, and to take advantage of the visibility of the GO TEXAN program.

(2) Receipt of the GO TEXAN Rural Community Program newsletter.

(3) Regular e-mail updates with timely information on workshops, resources and agencies or organizations focused on rural development.

(4) Inclusion in the GO TEXAN Rural Community Program database.

§29.32. Expiration and Renewal of Certified Membership.

(a) A certified member's membership expires on the third anniversary of the date the initial certified membership is issued.

(b) To be considered for renewal of certified membership by the department, an applicant must:

(1) complete and submit a renewal application; and

(2) submit any information or documentation required by the department.

§29.33. Use of the "Texas Yes!" Mark.

(a) Nothing in this Subchapter B shall affect the validity of any existing license agreement with the department concerning use of the "Texas Yes!" Mark.

(b) Licensees currently using the "Texas Yes!" mark may continue to do so under the terms of their license agreement with the department.

(c) Any "Texas Yes!" Program grant agreement entered into before the effective date of these rules, and the repeal of the "Texas Yes!" Program rules, shall continue in effect under the terms of the agreement, including terms allowing for the use of the "Texas Yes!" logo.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2008.

TRD-200801291

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.24

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 7, §§7.1 - 7.24, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas.

Specifically, this repeal will allow Board staff to combine provisions of Chapter 7 into a new chapter that will improve the processes private postsecondary educational institutions and out-of-state public postsecondary educational Institutions follow in order to operate in Texas.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Dr. Stafford has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be that the new sections will be a quicker, more effective, and more appropriate Board response to the requirements and needs of institutions wishing to operate in Texas. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed. There is no effect on small or micro businesses.There is no impact on local employment.

Comments on the proposal may be submitted to Joseph Stafford, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Joe.Stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.* A public hearing will be held in the Boardroom of the Coordinating Board offices Monday April 7, 2008, from 10 a.m. to 12 noon. While oral comments will be permitted, such comments must also be submitted in written form for consideration.

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The repeal affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§7.1. Purpose.

§7.2. Authority.

§7.3. Definitions.

§7.4. Recognition of Accrediting Agencies.

§7.5. Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization.

§7.6. Administrative Procedures Related to Certification of Nonexempt Institutions.

§7.7. Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.

§7.8. Standards for Certificates of Authority.

§7.9. Certificate of Registration for Agents of Nonexempt Institutions.

§7.10. Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units.

§7.11. Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

§7.12. Revocation of Certificates of Nonexempt Institutions and Agents.

§7.13. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

§7.14. Information Provided to Protect Public from Fraudulent, Substandard, or Fictitious Degrees.

§7.15. Prohibitions.

§7.16. Duties upon Dissolution of an Institution.

§7.17. Procedures Related to the Assessment of Administrative Penalties.

§7.18. Administrative Penalties.

§7.19. Injunctions.

§7.20. Civil Penalties.

§7.21. Deceptive Trade Practices Act.

§7.22. Alternative Certification of Authority.

§7.23. Alternative Certificate of Authority--Eligibility, Applications, and Renewals.

§7.24. Administrative Procedures Relating to Alternative Certification of Nonexempt Institutions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801422
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.16

The Texas Higher Education Coordinating Board proposes new §§7.1 - 7.16, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions. Rules in Chapters 7 and 12 currently provide for the issuance of certificates of authority for degree-granting postsecondary institutions other than Texas public institutions.

Specifically, by consolidating and reorganizing the material in these two chapters, institutions wishing to operate in Texas will be able to establish operations more easily and quickly. The language in the new Chapter 7 is intended to improve the understanding of the rules. There is also new clarifying language in §7.6 (relating to Recognition of Accrediting Agencies) on the standards for recognizing accrediting agencies. Other minor clarifying language changes are incorporated throughout the chapter. With the exception of two sections which have been deleted (§12.29 and §12.39), the provisions of Chapter 12 have been incorporated in the new Chapter 7. Section 12.1 (Purpose), §12.2 (Authority) and §12.3 (Definitions) have moved into §7.1 (Purpose), §7.2 (Authority), and §7.3 (Definitions), respectively. Sections 12.21 - 12.26, 12.28, 12.30 and 12.36 - 12.43 have moved to §7.9 (Certificate of Authority for Career Schools and Colleges). Sections 12.27, 12.31 - 12.33, 12.35, and 12.44 - 12.45 have been incorporated into §7.5 (Standards for Operations of Institutions). Section 12.34 has been moved to §7.12 (Changes of Ownership and Other Substantive Changes). Section 12.46 has been incorporated into §7.4 (Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas). The two deleted sections (§12.29 relating to the Texas Success Initiative and §12.39 relating to the Associate of Occupational Studies Degree), are no longer applicable to Career Schools and Colleges. The provisions of the current Chapter 7 have been consolidated and reorganized. Sections 7.1 - 7.3 remain under the current titles. Section 7.4 (Recognition of Accrediting Agencies) keeps that title but is now numbered §7.6. Section 7.5 (Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authority) has been incorporated into §7.4 (Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas). Section 7.6 (Administrative Procedures Related to Certification of Nonexempt Institutions) and §7.7 (Certificate of Authority - Eligibility, Applications, Renewals, and Amendments) have been incorporated into Section 7.7 (Certificate of Authority). Section 7.8 (Standards for Certificates of Authority) has been incorporated into §7.5 (Standards for Operation of Institutions). Section 7.9 (Certificate of Registration for Agents of Nonexempt Institutions) has moved to §7.11 (Registration of Agents). Section 7.10 (Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units) has been moved to §7.10 (Operation of Branch Campuses, Extension Centers or Other Off-Campus Units, Occasional Courses and Changes in Level). Section 7.11 (Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions) has been incorporated into §7.12 (Changes of Ownership and Other Substantive Changes. This section has significant new clarifying language.) Section 7.12 (Revocation of Certificates of Nonexempt Institutions and Agents) has moved to §7.13 (Revocation of Certificates of Nonexempt Institutions and Agents). Section 7.13 (Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority) has moved to §7.14 (Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority). Section 7.14 (Information Provided to Protect the Public from Fraudulent, Substandard, or Fictitious Degrees) has moved to §7.15 (Use of Fictitious, Fraudulent, or Substandard Degrees). Sections 7.15 - 7.21 (relating to Prohibitions, etc.) have been incorporated into Section 7.16 (Prohibitions, Administrative Penalties and Injunctions). Sections 7.22 - 7.24 (relating to Alternative Certificates of Authority) have been consolidated into §7.8 (Alternative Certificates of Authority).

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stafford has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be a quicker, more effective, and more appropriate Board response to the requirements and needs of institutions wishing to operate in Texas. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no effect on small or micro businesses. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph Stafford, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Joe.Stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.* A public hearing will be held by Coordinating Board staff in the Boardroom of the Coordinating Board offices, 1200 East Anderson Lane, Austin, Texas, Monday April 7, 2008, from 10 a.m. to 12 noon. While oral comments will be permitted, such comments must also be submitted in written form for consideration.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The new sections affect implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§7.1. Purpose.

This chapter clarifies the standards and details the process by which private postsecondary educational institutions and public out-of-state postsecondary educational institutions, as well as career schools and colleges, may be authorized to offer degrees, to offer credits toward

degrees, to employ agents, to use certain academic terms within the state, and to limit the use of certain academic degrees by individuals and institutions. The chapter proscribes certain behavior, and specifies the sanctions that may be imposed for violations of the applicable rules and statutes.

§7.2. Authority.

These sections relate to Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321 and Subchapter H, §§61.401 - 61.405, which regulate the awarding or offering of degrees, awarding or offering credit toward degrees, and use of certain academic terms by private postsecondary educational institutions and out-of-state public postsecondary educational institutions, and Chapter 132, relating to career schools and colleges.

§7.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic associate degree program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.

(2) Accreditation--The status of public recognition that a recognized accrediting agency grants to an educational institution.

(3) Accrediting agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(4) Agent--A person employed by or representing a postsecondary educational institution in an official capacity within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Alternative Certificate of Authority--A type of certificate of authority for approval of postsecondary institutions, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(6) Applied associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.

(7) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts and the associate of applied science.

(8) Board--The Texas Higher Education Coordinating Board.

(9) Board staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(10) Branch campus, extension center, or other off-campus unit--Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

(11) Career school or college--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by Texas Education Code §132.002, and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(12) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(13) Certificate of authority--The Board's approval of postsecondary institutions, (other than exempt institutions) with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(14) Certificate of authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(15) Change of ownership or control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) In the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) In the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(16) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(17) Classification of Instructional Programs (CIP) Code--The four (4)- or six (6)-digit code assigned to an approved associate degree program in accordance with the CIP manual published by the U. S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(18) Commissioner--The Commissioner of Higher Education.

(19) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(20) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(21) Educational or training establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(22) Exempt institution--An institution that is accredited by an agency recognized by the Board under §7.2 of this chapter (relating to Authority) or a career school or college that applies for and is declared exempt by the Texas Workforce Commission as described in Texas Education Code, §61.003(8) or Texas Education Code Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(23) Fictitious degree--A counterfeit or forged degree or a degree that has been revoked.

(24) Fraudulent or substandard degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this chapter;

(B) not eligible to receive a certificate of authority under this chapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.14 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this chapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.14 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(25) Home campus--The headquarters of an institution, such location to be determined as a matter of fact by the Commissioner based upon consideration of information such as, but not limited to the following:

(A) where the institution is chartered;

(B) the site, campus or city where the principal or chief executive's offices are located;

(C) the site, campus or city where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

(26) Occasional courses--Courses offered not more than twice at any given location in the state.

(27) Out-of-state public postsecondary institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(28) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(29) Postsecondary educational institution--An educational institution which furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(30) Program or Program of study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(31) Protected term--The term "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(32) Recognized accrediting agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(33) Representative--A person who acts on behalf of an institution regulated under this chapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(34) Required state or national licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

§7.4. Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas.

(a) A new institution must request and be granted a certificate of authority, an alternative certificate of authority, or a certificate of authorization by the Commissioner before it can offer to award degrees or courses leading to degrees. The Commissioner may issue a certificate of authorization to grant degrees to an institution, upon the institution's request and demonstration that it qualifies for an exemption under this subsection. The exemptions provided by this subsection apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the State of Texas, the exemption does not apply. Upon issuance of a certificate of authorization as an exempt institution, the provisions of this chapter, with the exception of §7.15 and §7.16 of this chapter, do not apply to following types of postsecondary institutions:

(1) Schools or colleges that do not award degrees or offer courses leading to degrees. However, such institutions are subject to the rules of the Texas Workforce Commission Pursuant to Chapter 132 of the Texas Education Code concerning career schools and colleges.

(2) A branch campus, extension center, or other off-campus unit operated by a private or independent Texas postsecondary institution as defined by Texas Education Code, §61.003.

(3) The home campus of an institution which is fully accredited by a recognized accrediting agency.

(4) An institution or degree program that has received approval by an agency of the State of Texas authorizing the graduates of the institution to take a state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) Institutions holding a Certificate of Approval from the Texas Workforce Commission to operate as a Career School or College may be able to obtain a Certificate of Authority to award degrees under §7.9 of this chapter (relating to Certificate of Authority for Career Schools and Colleges). All other non-exempt institutions must use either §7.7 or §7.8 of this chapter.

(c) The home campus of an institution that is not exempt under the provisions of subsection (a) of this section may obtain a certificate of authority under either §7.7 of this chapter (relating to Certificate of Authority) or an alternative certificate of authority under §7.8 of this chapter (relating to Alternative Certificates of Authority).

(d) Branch campuses of out-of-state public institutions must obtain a certificate of authority as outlined in §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions).

(e) Agents of an institution that is not exempt under the provisions of subsection (a) of this section, or operating with an alternative certificate of authority as provided by §7.8 of this chapter, must register with the Board as provided by §7.11 of this chapter (relating to Registration of Agents).

(f) A substantive change in the conditions under which an institution was granted a certificate of authority, an alternative certificate of authority or an exemption (certificate of authorization) must be reported in accordance with §7.12 of this chapter (relating to Occasional Courses, Changes of Level of Instruction, Changes of Ownership, and Other Substantive Changes). An accredited institution that is exempt under subsection (a)(3) of this section continues in that status so long as it maintains accreditation by a recognized accrediting agency.

(g) An institution offering only religious degrees may request a certificate of authorization affirming exempt status.

(h) Revocation of an exemption.

(1) If the Commissioner receives credible evidence that an institution is no longer qualified for an exemption, the institution shall be notified that its exempt status is revoked, and that the institution is subject to the requirements of Texas Education Code, Chapters 61 or 132 as appropriate, and this chapter.

(2) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for an exemption.

(3) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption.

(4) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(5) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.5. Standards for Operation of Institutions.

All institutions that operate within the State of Texas are expected to meet the following standards. Standards (2) and (3) do not apply to branch campuses operating under §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers or Other Off-Campus Units, Occasional Courses and Changes in Level). These standards will be enforced through the certificate of authority process or the alternative certificate of authority process. Substantially similar standards will be enforced by recognized accrediting agencies. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by regional and specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs, such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Career Schools and Colleges also shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of members of a policy making body, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Policy Making. The institution shall have an active policy-making body consisting of at least three (3) people, focused on promoting the mission of the institution, and shall exercise its authority to ensure that the mission of the institution is carried out. Members of the policy-making body shall represent the interests of all of the constituencies of the institution who are essential to carrying out the mission including the faculty, students, and staff.

(4) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the policy-making body of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration, (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Institutional Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For applied associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(9) Administrative Resources. All institutions having a certificate of authority shall have daily access to electronic communication, including e-mail and a connection to the Internet/World Wide Web. Institutions shall be able to receive and send time-sensitive information to students, faculty, the Board, and other stakeholders.

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses in a technical associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in a technical associate degree program shall have at least a baccalaureate degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a

statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees and applied associate degrees must consist of at least sixty (60) semester credit hours or ninety (90) quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours and not more than one hundred thirty-nine (139) semester credit hours or two hundred eight (208) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours or forty-five (45) quarter credit hours and not more than thirty-six (36) semester credit hours or fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency or hold a certificate of authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Career and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. If the catalog is made available in only an electronic format, the institution must preserve at least one (1) printed copy thereof for at least ten (10) years. The catalog must contain, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvi) any disclosures specified by the Board or defined in Board rules. If the catalog is made available in only an electronic format, the institution must preserve at least one printed copy thereof for at least ten years.

(C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas branch must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to enforce the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Reporting. The institutions shall provide to the Board annually, in a form established by the Board, student records of the type specified in Standard 19.

(25) Learning Outcomes. An institution may deviate from Standard 11 (relating to Faculty Qualifications), Standard 12 (relating to Faculty Size), Standard 16 (relating to Credit for Work Completed Outside a Collegiate Setting), and Standard 17 (relating to Learning Resources), if there is an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

§7.6. Recognition of Accrediting Agencies.

(a) The Texas Higher Education Coordinating Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree or higher. Demonstration of authorization shall include a photocopy of the official notice which clearly identifies all limitations on the scope of accreditation the Secretary of Education recognizes.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) Using the U.S. Department of Education classification of instructional programs (CIP) code at the two-digit level, the applicant shall identify all fields of study in which institutions it accredits may offer degree programs.

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree.

(iii) Only institutions that qualify as eligible for United States Department of Education Title IV programs as a result of accreditation by the applicant agency will be considered exempt under §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas).

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity;

(i) Accrediting agencies must show by listing all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) An accrediting agency that accredits programs as well as institutions shall demonstrate that either it accredits more institutions than programs or that it has policies, procedures and staff sufficient to address institutional standards of quality in addition to program standards of quality.

(iii) Accrediting agencies must have standards that require all accredited institutions to comply with all applicable laws in the state and local jurisdiction in which they operate and that require accredited institutions to clearly and accurately communicate their accreditation status to the public.

(D) Requires an onsite review by a visiting team as part of initial and continuing accreditation of educational institutions;

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a visiting team, that none have a monetary or personal interest in the findings of the on-site review, and that all have professional experience that qualifies them to review the institution's compliance with the standards of the agency.

(ii) Accrediting agencies shall provide a list of the visiting team members for the five (5) most recently completed on-site reviews. The list shall show name, employer, title of positions held with that employer and the standards for which the individual was responsible in that on-site review.

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board:

(i) Each accrediting agency shall provide the Board its official policy regarding disclosure of information about institutions that are or have been candidates for accreditation and are or have been accredited. Agencies shall provide to the Board, within ten (10) working days, any new information and any requested information about a Texas institution that would be available to the public under that official policy.

(ii) Each accrediting agency shall include in its standards for accreditation of Texas institutions that the institutions disclose publicly and to the Board the number of degrees awarded at each level each year and the number of students enrolled in the fall of each year.

(F) Has sufficient resources to carry out its functions.

(i) Accrediting agencies shall identify the number of on-site reviews conducted during the most recent twelve (12) month period, the number of staff members who participated in those on-site reviews and the maximum number of on-site reviews conducted by any individual staff member. If that maximum number exceeds thirty (30), the agency shall explain how it expects to carry out its function of enforcing its standards on Texas institutions.

(ii) Each accrediting agency shall provide evidence that its ratio of current assets to current liabilities equals or exceeds 1.2.

(iii) Each accrediting agency shall demonstrate that its fees are reasonable for the accreditation services provided.

(2) Recognition. To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews;

(i) Accrediting agencies must have publicly disclosed standards that are substantially similar to those in §7.5 of this chapter (relating to Standards for Operation of Institutions). In the application process, applicants shall demonstrate that similarity with a crosswalk or similar instrument.

(ii) Each accrediting agency shall provide its policy for periodic reviews. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iii) At least ten (10) working days before each schedule periodic on-site review of a Texas institution, accrediting agencies shall invite the Board staff to participate in the review. Such participation shall be at no expense to the institution or the accrediting agency.

(iv) Within ten (10) working days of an official change in standards, the agency shall notify the Board of those changes.

(v) By providing a copy of its publicly disclosed policies and procedures, each accrediting agency shall demonstrate that its initial and ongoing reviews and the resultant accreditation decisions are fair and consistent with the available evidence.

(vi) Accrediting agencies that use an advisory body, similar to the Certification Advisory Council described in §7.7(b) of this chapter (relating to Certificate of Authority), shall describe the advisory body's composition and authority. Accrediting agencies that do not use such a body shall describe the process used to ensure that the evidence obtained from reviews results in appropriate accreditation decisions.

(vii) The initial and ongoing reviews shall include an institutional self-evaluation process or a documented alternative process to promote continuous quality improvement.

(viii) Each accrediting agency shall have and publicly disclose its processes for appealing accreditation decisions.

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time. Written evidence may consist of a letter from the chief executive officer of the accrediting agency. Accrediting agencies shall submit the evidence annually prior to the anniversary date of the initial Board recognition.

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution where the accrediting agency took official action on issues of non-compliance and the disposition of those complaints;

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority; and

(F) Demonstrate that the ownership and control of the accrediting agency is sufficiently independent to insure that the accreditation process is conducted in the public interest.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any requirements in this chapter will be grounds for the Board to consider withdrawing recognition.

(2) The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(3) The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(4) An institution operating in Texas as an exempt institution pursuant to §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas) when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have ninety (90) days to apply for a Certificate of Authority or to reach agreement with the Board on a schedule for ceasing its operations in Texas.

(5) An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.7. Certificate of Authority.

(a) The Board may issue to a nonexempt institution a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards set forth in §7.5 of this chapter (relating to Standards for Operation of Institutions).

(b) Certification Advisory Council.

(1) The Board shall appoint a certification advisory council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, to assist the Commissioner in the examination of individual applications for certificates of authority, and to perform other duties related to certification that the Board finds to be appropriate.

(2) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private postsecondary institutions in Texas.

(3) The members shall be appointed for two year fixed and staggered terms.

(c) Fees.

(1) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for certificates of authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an onsite review is conducted.

(2) Each biennium, the Commissioner shall also set the fees for amendments to certificates of authority; initial reviews of branch campuses or extension centers; site visits to branch campuses or extension centers; and certificates of registration of agents.

(3) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(d) Board's review of applications.

(1) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, may visit the institution and conduct an onsite survey to evaluate the application for a certificate of authority. The visiting team will be composed of people who have experience and knowledge relating to postsecondary institutions.

(2) The visiting team will prepare a written report of its findings regarding the institution's ability to meet the standards for a certificate of authority. This report will be provided to the applicant institution, which shall have thirty (30) days within which to submit a written response.

(3) The certification advisory council will review the findings of the visiting team and the response of the institution and submit to the Commissioner a recommendation concerning the application.

(4) The Commissioner will forward to the Board the recommendation of the advisory council with his endorsement or with an alternative recommendation.

(5) Upon approval of the Board to award a certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state, at a minimum, that the institution is authorized to grant certain degrees, the issue date, and the period for which the certificate is valid.

(6) If the Board denies an institution's application for a certificate of authority, or for renewal of its certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

(A) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

(B) Until the certificate of authority is reinstated, the institution may not grant degrees or receive payments from students for courses which may be applicable toward a degree.

(C) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(D) The period of time during which the institution does not hold a certificate of authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in subsection (h) of this section; the time period begins to run again upon reinstatement.

(7) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(e) Terms and limitations of a certificate of authority.

(1) The certificate of authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(2) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subsection (h)(3) of this section. Therefore, the institution awarded a certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(f) Eligibility to apply. The Board will accept applications for a certificate of authority only from those institutions:

(1) proposing to offer a degree or credit courses alleged to be applicable to a degree; and

(2) which have been in operation for a minimum of two years, or held an alternative certificate of authority for one year. As a minimum, "in operation" means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a certificate of authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions, which is:

(A) In a form acceptable to the Board; and

(B) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(g) Application for certificate of authority.

(1) Institutions seeking a certificate of authority are urged to contact Board staff before filing a formal application.

(2) Applications must be submitted with an original and four (4) copies and accompanied by the fee described in subsection (c) of this section.

(3) Documentary evidence of compliance with subsection (f)(2) of this section must be filed with the application.

(4) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the certification advisory council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a certificate of authority.

(h) Renewal of certificate of authority.

(1) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in subsection (c) of this section.

(2) The application for renewal of the certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.

(3) An institution may be granted consecutive certificates of authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(4) Subject to the restrictions of paragraph (3) of this subsection, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

(i) Amendments to a certificate of authority.

(1) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for

amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within one hundred twenty (120) days.

(2) Applications for amendment shall be accompanied by the fee described in subsection (c) of this section.

(3) Unless the Board finds that the new program of study does not meets the required standards, the Board shall amend the institution's certificate accordingly.

(j) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this chapter (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(1) the other institution is named in such representation, and is accredited by a recognized accrediting agency or has a certificate of authority;

(2) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(3) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' boards of trustees in writing, and is filed with the Board.

(k) Duty to report.

(1) Institutions holding a certificate of authority will be required to:

(A) furnish a list of their agents to the Board; and

(B) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board.

(2) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board staff to determine if such changes adversely affect the conditions under which the certificate was granted. For purposes of this provision, administrative personnel consist only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger notification.

(l) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within forty-five (45) days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.8. Alternative Certificate of Authority.

In lieu of the standard certification of authority requirements for institutions and their agents in §§7.7, 7.11, and 7.12 of this chapter, an institution may obtain an alternative certificate of authority to issue degrees as provided by this section. Alternative certificates of authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular certificate of authority shall be required. A site visit shall be conducted by Board staff during the initial twelve month period.

(1) Surety Instrument Requirement.

(A) At the time application is made for an alternative certificate of authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas shall file one bond or surety alternative covering the school and its agents.

(B) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an alternative certificate of authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(C) A school, whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students, shall be noncompliant with these sections, and, if, after ten (10) working days from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its alternative certificate of authority.

(D) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than five thousand dollars ($5,000).

(E) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or surety alternative.

(F) In order to be approved by the Board, a surety bond must be:

(i) Executed by the applicant and by a surety company authorized to do business in Texas;

(ii) In a form acceptable to the Board;

(iii) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation; and

(iv) An original bond.

(G) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(i) Is in a form acceptable to the Board;

(ii) Is executed by the applicant; and

(iii) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(H) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(i) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(ii) Is either:

(I) Payable to the Board;

(II) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(III) In the case of a non-negotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(I) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation.

(J) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of postsecondary institutions, which:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(K) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(i) If the applicant is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate board.

(ii) If the applicant is a limited liability corporation the document must be executed by the members.

(iii) If the applicant is a partnership, the document must be executed by all general partners.

(iv) If the applicant is an individual, the document must be signed by the individual.

(v) If the applicant is a state agency, the document must be signed by the Director of that Department.

(vi) If the applicant is a local government, the document must be signed by the mayor or board president.

(L) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single schools.

(M) A school applying for an alternative certificate of authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.1 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two (2) years.

(2) Application and Statement. Institutions seeking an alternative certificate of authority are urged to obtain informal guidance from Board staff before filing a formal application. The Board will accept applications for an alternative certificate of authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(3) An institution seeking an alternative certificate of authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.5 of this chapter (relating to Standards for Operation of Institutions); a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent. The application shall contain:

(A) The name and address of the institution and its purpose;

(B) The names of the sponsors or owners of the institution;

(C) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

(D) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(E) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(F) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(G) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process.

(4) Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this chapter (relating to Definitions) and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(5) Applications must be submitted with an original and four copies and accompanied by the required fee. Alternative certificate of authority fees shall be five hundred dollars ($500) more than the fee for a regular certificate of authority, as established in §7.7(c) of this chapter (relating to Certificate of Authority).

(6) Board's review of applications.

(A) Within ninety (90) days of receipt of a complete application, Board staff will review said application and recommend to the Commissioner either approval or denial of the application.

(B) Within one hundred twenty (120) days of receipt of a complete application, the Commissioner shall either award a one-year certificate of authority or deny the application.

(C) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five

(45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(7) Terms and limitations of an alternative certificate of authority.

(A) The alternative certificate of authority to grant degrees is valid for one (1) year from the date of issuance.

(B) The institution shall notify the Board at least ten (10) working days prior to the start of the first class of its first year schedule. Board staff shall visit the institution and interview both staff and students at least once during the first year.

(C) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in §7.7(d)(6)(D) of this chapter. An institution awarded an alternative certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the alternative certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are usually mentioned, including the institution's catalog and the home page of the institution's Internet website.

(D) The Commissioner may revoke an institution's alternative certificate of authority to grant degrees at any time if the Commissioner finds that:

(i) Any statement contained in an application for the certificate is untrue;

(ii) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(iii) Advertising or representations made on behalf of the institution is deceptive or misleading; or

(iv) The institution has violated any provision of this chapter.

(8) Continuing operations after one year.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current alternative certificate of authority, an institution, if it desires to continue operations, shall make application to the Board following the process in §7.7(h) of this chapter.

(B) The application will be evaluated in the same manner as that prescribed for evaluation of an initial application.

§7.9. Certificate of Authority for Career Schools and Colleges.

(a) A career school or college not otherwise exempt under the Texas Education Code, Chapter 132 or §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas) must have approval from the Board in order to grant associate of applied science or associate of applied arts degrees or to enroll students for courses that may be applicable toward those associate degrees. A career school or college that does not have approval to grant associate degrees must request approval from the Board in conjunction with an application for a new degree program as specified in subsection (h) of this section. If approved, the Board shall issue a certificate of authority.

(b) A career school or college may submit an application for a certificate of authority to grant degrees to the Board if it:

(1) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a non degree-granting institution for a minimum of two (2) years;

(2) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and wishes to open a new campus; or

(3) has been legally operating as a degree-granting institution in another state for a minimum of four (4) years and can verify compliance with all applicable laws and rules in that state.

(c) Application for a Certificate of Authority.

(1) Letter of Intent. A career school or college seeking degree granting authority shall submit a letter of intent for a new program application as outlined in subsection (h) of this section

(2) Initial visit. A member of the Board staff shall visit the proposed school to verify compliance with Board standards and policies.

(3) Submission of the application for a certificate of authority, which shall include the following documentation:

(A) a description of the purpose of the institution;

(B) names of sponsors or owners of the institution;

(C) regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;

(D) the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing boards;

(E) a full description of the admission requirements;

(F) a description of the facilities, learning resources, and equipment utilized by the institution;

(G) evidence of approval from the Texas Workforce Commission. The Board will not approve an application for a Certificate of Authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction.

(H) the application for Approval of a New Workforce Program, as specified in subsection (h) of this section.

(4) Follow-up visit. A member of the Board staff may make a follow-up visit to the proposed site for the applicant school prior to implementation of the workforce education program(s).

(5) Fee. The applicant institution shall submit a fee as required under §7.7(c) of this chapter (relating to Certificate of Authority).

(d) Commissioner Action on an Application for a Certificate of Authority.

(1) The Commissioner or his/her designee shall approve or disapprove the application for a certificate of authority. Approval of the application grants the career school or college the authority to award associate's degrees or to enroll students for courses that may be applicable toward an associate degree. Separate program approval shall be required for each associate degree program in accordance with this chapter.

(2) Approval for each specified associate degree program continues in effect unless the Commissioner withdraws or suspends

the certificate of authority and/or approval for a specific program because of the institution's failure to comply with Board rules, regulations, and/or policies or because the Texas Workforce Commission revokes the institution's approval to operate. The certificate of authority remains the property of the Board; an institution shall return its certificate of authority in the event the Commissioner withdraws the certificate of authority, the institution voluntarily terminates all associate degree programs, or the institution closes.

(e) Career schools and colleges holding a certificate of authority to grant an associate degree shall make available, upon request by the Board, all accrediting agency reports and any findings and institutional responses to such reports and findings.

(f) If cited by an accreditor, a career school or college authorized to grant the associate degree shall, within 30 days of receipt of the accrediting agency's final report, provide the Board with a copy of the citation, the accreditor's final report, and a complete report of all subsequent actions by both the accreditor and the institution.

(g) A career school or college shall operate all associate degree programs in compliance with the standards of its institutional and/or program-level accreditation or with membership in a trade or professional association.

(h) New Program Application. Each career school or college wishing to offer a new associate degree program shall complete the following items and submit them to Board staff:

(1) Letter of Intent. The applicant school shall submit a letter of intent no less than 30 and not more than 180 days prior to the submission of the application for Approval of a New Workforce Program.

(2) Application for Approval of a New Workforce Program. The chief executive officer and, if applicable, the governing board of the career school or college shall approve the application for Approval of a New Workforce Program. The applicant school shall ensure that Board staff receive the application for Approval of a New Workforce Program no less than three (3) calendar months prior to the intended implementation date or approval deadline for external accreditation, whichever occurs first.

(3) Statement of Assurances. The chief executive officer and, if applicable, the governing board of the career school or college shall approve the Statement of Assurances. The applicant school shall submit the Statement of Assurances with the application for Approval of a New Workforce Program. The following criteria are included in the Statement of Assurances:

(A) The institution has documented need for the proposed program based on national, regional, and/or local economic forecasts applicable to its target market area.

(B) The institution has identified sufficient employment opportunities within its target market area for the projected number of graduates, taking into consideration the numbers of graduates of similar programs within its target market area.

(C) Instruction in basic workforce skills has been integrated into the curriculum for the proposed program.

(D) Each program award offers at least one of the following: a capstone, an external learning experience, or eligibility to sit for a certification or licensure examination.

(E) All course and program prerequisites are identified on the proposed curriculum outline and included in the credit/contact hour totals for the program.

(F) An enrollment management plan for the program is in place.

(G) The program is consistent with all requirements from other registering, certifying, licensing, and/or accrediting authorities.

(H) An advisory committee composed of representatives from business and industry has been directly involved in the creation of the proposed program.

(I) Adequate funding is available to cover all program costs for the first three years.

(J) The institution is in good standing with its accreditor and the Texas Workforce Commission.

(K) The institution is not currently a defendant in a legal proceeding or has notified the Board according to provisions in this chapter.

(4) Fee. The applicant school shall submit the fee for an application for Approval of a New Workforce Education Program simultaneously with the application.

(i) New Program Approval. The Board staff shall review the application and accompanying documentation for satisfactory fulfillment of the new program requirements and procedures for a new certificate of authority and/or new workforce education program. The staff shall confer with the career school or college when additional information or clarification is needed.

(j) Board staff shall recommend schools and/or associate degree programs to the Commissioner for approval or disapproval or referral to the Board.

(k) The Board delegates to the Commissioner final approval authority for all schools and/or associate degree programs that meet Board policies for approval.

(l) The Commissioner shall forward a school and/or program application to the Board for consideration at an appropriate quarterly meeting if:

(1) the proposed program is the subject of an unresolved grievance or dispute between the institution and other colleges or universities; and/or

(2) the Commissioner has disapproved the proposed school and/or program and the institution has requested a Board review at the next quarterly Board meeting.

(m) A career school or college offering an associate degree program at multiple sites shall seek separate approval of each program of study for each site.

(n) The Commissioner shall automatically withdraw approval for any associate degree program not implemented in accordance with Board rules, regulations, and/or policies, and/or not implemented within eighteen (18) months of the date of approval.

(o) Program Revision. Each career school or college requesting a program revision shall submit a completed application for Program Revision.

(p) A career school or college may close a program voluntarily with the approval of the Commissioner or his designee.

(q) Concurrent instruction of students enrolled in an associate degree program or in any component of a degree program is prohibited. The following activities do not constitute concurrent instruction:

(1) voluntary participation in laboratory and/or skill-building activities outside of required lecture and laboratory class sessions;

(2) voluntary participation in study and/or review sessions outside of required lecture and laboratory class sessions;

(3) sitting for proctored examinations;

(4) field trips; or

(5) extracurricular activities.

(r) Institutional effectiveness. When applying for a certificate of authority to grant applied associate degrees and/or for a new applied associate degree program, the institution must demonstrate, for as long as the program(s) are operational, that:

(1) it is in full compliance with all oversight, regulatory, and accrediting bodies' requirements;

(2) it meets the following institutional effectiveness measures for each existing program for the last consecutive three-year period:

(A) for those occupations where state or national licensure, certification, or other credentialing examinations exist, at least ninety (90) percent of program graduates pass the credentialing examination;

(B) if the pass rate for graduates from the applicant institution is no more than five (5) percent below the state or national average for the examination;

(C) a minimum of fifteen (15) students graduated over the course of the last three years; or

(D) within one (1) year of graduation, at least seventy (70) percent of graduates are employed in the field for which they are trained, in full-time military service, or pursuing additional education. If the institution must include graduates who are pursuing additional education in order to meet the seventy (70) percent standard, the institution shall include a list of those graduates and official supporting documentation. Official documentation must be from the institution the student is attending. If the institution must include graduates who are full-time military in order to meet the seventy (70) percent standard, the institution shall include a list of those graduates and a copy of their military orders.

(3) For institutions located in Texas, agency staff shall use the data the institution reported to the Texas Workforce Commission for the most recent consecutive three (3) year period.

(4) For institutions located outside of Texas, the institution shall submit employment data for the institution according to the Texas Workforce commission definition of "employed" or "employment, and "completer" for the most recent consecutive three-year period.

(s) Closure of a Career School or College.

(1) The governing board, owner, or chief executive officer of a career school or college that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(2) If a career school or college closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(3) If a career school or college closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another career school or college authorized by the Board to hold a Certificate of Authority according to this section, with a school accredited by a recognized accrediting agency, or with a public two-year college. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(4) The Certificate of Authority for a career school or college is automatically withdrawn when the institution closes. The Commissioner may grant to a career school or college that has a Certificate of Authority temporary approval to award a degree(s) in a program the institution does not have approval for in order to facilitate a formal agreement as outlined under this section.

(A) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(B) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

§7.10. Operation of Branch Campuses, Extension Centers or other Off-Campus Units, Occasional Courses and Changes in Level.

(a) Off-Campus Operations.

(1) A nonexempt institution may not operate a branch campus.

(2) A private postsecondary institution must be approved by the Board to operate a branch campus, extension center, or other off-campus unit in Texas, except as noted in §7.5 of this chapter (relating to Standards for Operation of Institutions).

(3) An institution with off-campus offerings that approach the scale of a branch campus, extension center, or other off-campus unit, as defined in §7.3 of this chapter (relating to Definitions), must submit to the Board a description of its plans, including such information as requested on an application form, to be furnished by the Board upon request.

(4) On receipt of an acceptable application and the application fee for initial review of a branch campus or extension center listed in §7.7(c) of this chapter (relating to Certificate of Authority), the Commissioner may authorize the institution to begin operations at the branch campus, on a temporary basis, pending a formal review and evaluation.

(5) Formal Review and Evaluation.

(A) Accreditor's on-site review and evaluation. If the applicant institution is accredited by a recognized accrediting agency, it shall inform its recognized accreditor of the institution's temporary authorization from the Board to begin operations, as provided in paragraph (4) of this subsection, so that the accreditor may conduct a site visit at the branch campus or extension center to verify compliance with that accreditor's criteria for branch campuses.

(i) An exempt institution shall submit to the Board the report of the recognized accreditor's review and evaluation.

(ii) After examining the report of the recognized accreditor concerning an exempt institution, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary authorization of the branch campus or extension center.

(iii) Final approval by the accreditor of an exempt institution must be made within two (2) years of the initial approval by the Commissioner, or the Board's temporary authorization will lapse.

(iv) If the accreditor denies approval of an exempt institution, the Board's temporary authorization shall immediately expire.

(B) Board's on-site review and evaluation. If the accreditor does not conduct an on-site review and evaluation of the branch campus or extension center or the institution is non-exempt, the Board will conduct an office review and, if deemed necessary, an on-site review and evaluation to determine whether the branch complies with the Board's standards of operations.

(i) The Board may invite the recognized accrediting agency for the institution to provide representation, to accompany the visiting team, and to supply comments.

(ii) If an on-site review is conducted, the institution shall be assessed the fee for an on-site survey to a branch campus or extension center, as provided in §7.7(c) of this chapter.

(iii) The institution shall be sent the report of the Board's review and evaluation and shall have thirty (30) days to submit a written response to the report.

(iv) After examining the report of review and evaluation and the institution's written response, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary approval of the branch campus or extension center.

(6) The Board requires reviews, including site visits, of an exempt branch campus or extension center according to the schedule used for accreditation of the main campus by the recognized accreditor. The review will be conducted in the same manner as described in paragraph (5) of this subsection. The Commissioner may deny continuing approval of any branch campus or extension site which fails to maintain the conditions and standards on which approval was based.

(7) In the event of any adverse determination made under the authority of this section by the Commissioner, the institution shall receive notice of the determination, and shall be given the reasons for the denial in writing.

(8) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(b) Standards for Off-Campus Operations at Exempt Institutions. The standards for operations of an institution as set forth in §7.5 of this chapter apply with the following additions:

(1) Administration of the Branch Campus. There shall be an appropriate and effective administrative structure between the main campus and the off-campus unit.

(2) The character, education, and experience in higher education of the local administrators shall be such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study. Local faculty must have the same degree of separation and independence from the administration that faculty on the main campus enjoy.

(c) Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

(1) Occasional Courses. A private institution may offer occasional degree-credit courses at off-campus sites in Texas without prior approval of the Board. Nonexempt private institutions must submit an annual report to the Board listing any new such courses added that year.

(2) Changes of Level for Exempt Private Institutions. An institution which is exempt by accreditation from a recognized agency and which has established stability by being so accredited for the previous ten years and which wishes to expand to a different degree level not covered by its existing accreditation shall, by submission of a letter to the Commissioner outlining the degree or degrees to be offered at the higher level, be granted state authorization to seek accreditation at the higher level with the recognized accrediting agency. If the recognized accrediting agency does not extend accreditation to the higher level or if the institution has not been accredited for ten or more years, the institution may seek a certificate of authority under the procedures listed in §7.7 of this chapter.

(3) Out-of-State Public Postsecondary institutions. An out-of-state public institution of higher education as defined in §7.3 of this chapter must have approval of the Board to offer a course or a grouping of courses within the State of Texas (Texas Education Code, Chapter 61, Subchapter H). The institution must submit a description of its plans prior to offering courses, including information requested on an application form furnished by the Board. The application will be subject to review under the procedures listed in §7.7 of this chapter.

§7.11. Registration of Agents.

(a) A person desiring to solicit students for enrollment, or to accept funds from Texas students, or otherwise to perform services as an agent of a nonexempt institution pursuant to the provisions of the Texas Education Code, Title 3, Chapter 61, Subchapter G and this chapter, shall make application for a certificate of registration on forms that will be provided by the Board upon request.

(b) The application shall be accompanied by the fee described in §7.7(c)(2) of this chapter (relating to Certificate of Authority).

(c) Upon request of the Commissioner or the Commissioner's designee, the agent shall provide sufficient evidence of good character.

(d) The agent's certificate of registration shall be issued for a five-year period.

(e) If the Commissioner denies the application for a certificate of registration, or a renewal of the certificate of registration, the applicant shall be notified in writing, and shall be given the reasons for the denial. Additionally, the Commissioner shall notify the institution or institutions which the agent represented or proposed to represent, according to the records of the Board, in the same manner.

(f) At least sixty (60), but no more than one hundred twenty (120), days prior to the expiration of an agent's certificate, the agent shall complete and file with the Board an application for renewal, accompanied by the registration fee described in §7.7(c)(2) of this chapter.

(g) If a determination under this section is adverse to a person or institution, it shall become final and binding unless, within forty-five (45) days of the receipt of the adverse determination, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.12. Changes of Ownership and Other Substantive Changes.

(a) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for alternative certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which the certificate was granted. An institution may choose to comply with this provision by posting a notice of the change on its website and, by fax, letter, phone, or email, notifying the Board that such notice has been so posted. For purposes of this provision:

(1) a change in administrative personnel that must be reported occurs only if an individual in an executive leadership role that involves setting institutional policies vacates that position;

(2) a change in facilities that must be reported occurs only if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported; and

(3) changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of faculty collectively in an area (an academic or technical department) shall be reported.

(b) Change of Ownership or Control for Career Schools and Colleges. In the event of a change in ownership or control of a career school or college, the certificate of authority is automatically withdrawn unless the institution meets the requirements of this section.

(c) The Commissioner may authorize the institution to retain the certificate of authority during and after a change of ownership or control, provided that the institution notifies Board staff of the impending transfer in time for staff to receive, review, and approve the documents listed below and provided that the following conditions are met:

(1) The institution must submit acceptable evidence that the new owner is complying with all Texas Workforce Commission requirements regarding the purchase or transfer of ownership of a career school or college;

(2) The institution must submit an acceptable written statement of assurance that the new owner understands and undertakes to fully comply with all applicable Board rules, regulations, and/or policies; and

(3) The institution must submit satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation shall include but may not be limited to independently audited financial statements and auditor's reports.

(d) If the institution does not meet the conditions outlined under this section prior to completion of transfer of ownership or control and the institution loses its certificate of authority, the new owner(s) shall submit a new application for a certificate of authority as outlined under §7.9 of this chapter (relating to Certificate of Authority for Career Schools and Colleges) and a new application for approval of a New Workforce Program for Career Schools and Colleges for each degree program it wishes to offer, as outlined under §7.9(h) of this chapter.

(e) Any modification of an approved associate degree program that results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions shall conform to the procedures and requirements contained in §7.9(o) of this chapter.

(f) If the ownership or control of a career school or college is transferred within, among, or between different subsidiaries, branches, divisions, or other components of a corporation and if said transfer in no way diminishes the career school or college's administrative capability or educational program quality, the Commissioner may permit the school to retain its certificate of authority during the transfer period. In such cases, the career school or college shall fully comply with all provisions outlined in this section.

§7.13. Revocation of Certificates of Nonexempt Institutions and Agents.

(a) The Commissioner may revoke an institution's certificate of authority, including an alternative certificate of authority, to grant degrees at any time if the Commissioner finds that:

(1) Any statement contained in an application for the certificate is untrue;

(2) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(3) Advertising or representations made on behalf of the institution is deceptive or misleading; or

(4) The institution has violated any provision of this chapter.

(b) The Commissioner may revoke an agent's certificate of registration at any time if the Commissioner finds that:

(1) Any statement contained in the application is untrue;

(2) The institution represented has had its certificate of authority revoked;

(3) The agent has made false, deceptive, or misleading statements while attempting to solicit residents of this state as students;

(4) The agent has violated any provision of this chapter;

(5) Notice of revocation under subsection (a) and this subsection shall be provided to the certificate holder and shall contain information regarding the reasons for the revocation; or

(6) Notice of revocation under paragraph (1), (3), or (4) of this subsection shall also be given to the institution that the agent represented or purported to represent. Immediately upon receipt of actual knowledge of the agent's violation, or upon receipt of the Commissioner's notice, whichever is earlier, the institution shall make every effort to:

(A) divest the agent of the authority and of the apparent authority to represent the institution;

(B) notify the media through which the agent made the misrepresentations of the actual facts; and

(C) notify all students whose decision to enroll in the institution was affected by the agent's misrepresentation, of the actual facts.

(7) A revocation made pursuant to this section shall become final and binding unless, within forty-five (45) days of its receipt of the notice of revocation, the institution or agent invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.14. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

(a) A person holding a degree from an institution that is not eligible to receive a certificate of authority may request a letter from the Board confirming that the institution is not eligible for a certificate of authority and providing the procedures for review and approval of the degree for use in Texas. The Board shall send a copy of the letter to the institution.

(b) Procedures for review and approval.

(1) An institution that confers a degree described in §7.3(24)(B) or (C) of this chapter (relating to Definitions), may request that the Board review and approve for use in Texas that degree, as provided in those sections. The person or institution shall submit the request on a form created by the Board.

(2) The Commissioner shall apply the standards provided in §7.5 of this chapter (relating to Standards for Operations of an Institution) to determine if the degrees awarded by a person or institution

are equivalent to degrees granted by a private postsecondary educational institution or other person holding a certificate of authority from the Board.

(3) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, shall visit the institution and conduct an on-site survey to evaluate the application for review and approval. The visiting team shall be composed of people who have experience on the faculties or staffs of accredited institutions and who possess knowledge of accreditation standards.

(4) The Board shall charge the person or institution petitioning for review and approval a fee equal to the application fee for a certificate of authority or the actual cost of conducting the review, including travel expenses and cost of consultant fees, whichever is greater.

§7.15. Use of Fictitious, Fraudulent, or Substandard Degrees.

(a) The Board shall disseminate the following information through the Board's Internet website:

(1) the accreditation status or the status regarding authorization or approval under this chapter, to the extent known by the Board, of each exempt institution operating in the state, each postsecondary educational institution or other person that is regulated under §§7.7 - 7.12 of this chapter or for which a determination is made under §7.12(c) of this chapter (relating to Occasional Courses, Changes of Level of Instruction, Changes of Ownership, and other Substantive Changes), and any institution offering fraudulent or substandard degrees, including:

(A) the name of each educational institution accredited, authorized, or approved to offer or grant degrees in this state;

(B) the name of each educational institution whose degrees the Board has determined may not be legally used in this state;

(C) the name of each educational institution that the Board has determined to be operating in this state in violation of this chapter; and

(D) any other information considered by the Commissioner to be useful to protect the public from fraudulent, substandard, or fictitious degrees.

(2) the Board shall utilize such usual and customary sources for determining the accreditation status of institutions, such as: guides to international education; the Board's knowledge of legal actions taken against institutions, either by an agency of the state of Texas or agencies of other states or nations; or civil actions against institutions brought by governmental agencies or individuals.

(b) In determining the legitimacy of institutions headquartered or operating outside of Texas, the Board may determine if the state or nation in which the person or institution is headquartered, operates, or holds legal authorization to operate has standards and practices that are as rigorous as those of the Board's. A determination that a particular state or nation's standards or practices are not appropriately rigorous shall be sufficient reason to disapprove the use of the degrees of a person or institution.

§7.16. Administrative Penalties and Injunctions.

(a) A person or institution may not:

(1) Grant, award, or offer to award a degree on behalf of a nonexempt institution unless the institution has been issued a certificate of authority, including an alternative certificate of authority, to grant the degree by the Board;

(2) Represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified under §7.7 of this chapter (relating to Certificate of Authority) and approved by the Board, or represent that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term;

(3) Award or offer to award an honorary degree on behalf of a private postsecondary institution subject to the provisions of the chapter, unless the institution has been awarded a certificate of authority to award such a degree, or solicits another person to seek or accept an honorary degree and, further, unless the degree shall plainly state on its face that it is honorary;

(4) Use a protected term in the official name or title of a nonexempt private postsecondary institution or describe an institution using any of these terms or a term having a similar meaning, except as authorized by the Board, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(5) Use a protected term in the official name or title of an educational or training establishment or describe an institution using any of these terms or a term having a similar meaning, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(6) Act as an agent who solicits students for enrollment in a private postsecondary institution subject to the provisions of the chapter without a certificate of registration, if required by this chapter.

(7) Use or claim to hold a degree that the person knows is a fraudulent or substandard degree or is a fictitious degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(b) Institutions Located on Federal Land in Texas. An institution that is operating on land in Texas over which the federal government has exclusive jurisdiction shall limit the recruitment of students and advertising of the institution or its programs or courses to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land. The institution shall not enlist any agent, representative, or institution to recruit or to advertise by any medium, the institution or its programs or courses except on the federal land.

(c) A violation of this subsection may constitute a violation of the Texas Penal Code, §32.52. An offense under subsection (a)(1) - (6) of this section may be a Class A misdemeanor and an offense under subsection (a)(7) of this section may be a Class B misdemeanor.

(d) In the event any institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of said institution shall cause to be filed with the Board the original or legible true copies of all such academic records of said institution as may be specified by the Commissioner. Such records shall include, without limitation:

(1) such academic information as is customarily required by colleges when considering students for transfer or advanced study; and

(2) the academic records of each former student.

(e) In the event it appears to the Commissioner that any records of an institution that is discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Board, the Commissioner may seek, on the Board's behalf, court authority to take possession of such records.

(f) The Board shall maintain or cause to be maintained a permanent file of such records coming into its possession.

(g) If a person or institution violates a provision of this chapter, the Commissioner may assess an administrative penalty against the person or institution as provided in this section.

(h) The Commissioner shall send written notice by certified mail to the person or institution charged with the violation. The notice shall state the facts on which the penalty is based, the amount of the penalty assessed, and the right of the person or institution to request a hearing.

(i) The Commissioner's assessment shall become final and binding unless, within forty-five (45) days of receipt of the notice of assessment, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(j) If the person or institution does not pay the amount of the penalty within thirty (30) days of the date on which the assessment becomes final, the Commissioner may refer the matter to the attorney general for collection of the penalty, plus court costs and attorney fees.

(k) Any person or institution that is neither exempt nor the holder of a certificate of authority, including an alternative certificate of authority, to grant degrees, shall be assessed an administrative penalty of not less than $1,000 or more than $5,000 for, either individually or through an agent or representative:

(1) conferring or offering to confer a degree;

(2) awarding or offering to award credits purported to be applicable toward a degree to be awarded by another person or institution (except under conditions and in a manner specified and approved by the Board);

(3) representing that any credits offered are collegiate in nature subject to the provisions of this chapter;

(4) each degree conferred without authority, and each person enrolled in a course or courses at the institution whose decision to enroll was influenced by the misrepresentations, constitutes a separate offense.

(l) Any person or institution that violates subsection (a)(4) or (5) of this section shall be assessed an administrative penalty of not less than $1,000 or more than $3,000.

(m) Any agent who solicits students for enrollment in an institution subject to the provisions of the chapter without a certificate of registration shall be assessed an administrative penalty of not less than $500 or more than $1,000. Each student solicited without authority constitutes a separate offense.

(n) Any operations which are found to be in violation of the law shall be terminated.

(o) The Commissioner may report possible violations of this chapter to the attorney general. The attorney general, after investigation and consultation with the Board, shall bring suit to enjoin further violations.

(p) An action for an injunction under this section shall be brought in a district court in Travis County.

(q) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or any other remedy allowed by law. A civil penalty may not exceed $1,000 a day for each violation.

(r) The attorney general, at the request of the Board, shall bring a civil action to collect a civil penalty under this section.

(s) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of the Texas Business & Commerce Code, §17.46.

(t) A public or private right or remedy under the Texas Business & Commerce Code, §17, may be used to enforce this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801421
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

CHAPTER 12. CAREER SCHOOLS AND COLLEGES

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 12, §§12.1 - 12.3, 12.21 - 12.39, and 12.41 - 12.46, of Board rules concerning Career Schools and Colleges. Specifically, this repeal will allow Board staff to combine provisions of Chapter 12 into a new chapter that will improve the processes Career Schools and Colleges follow in order to operate in Texas.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stafford has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section will be a quicker, more effective, and more appropriate Board response to the requirements and needs of institutions wishing to operate in Texas. Many of those institutions are small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph Stafford, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Joe.Stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*. A public hearing will be held in the Boardroom of the Coordinating Board offices Monday April 7, 2008, from 10 a.m. to 12 noon. While oral comments will be permitted, such comments must also be submitted in written form for consideration.

SUBCHAPTER A. PURPOSE, AUTHORITY, AND DEFINITIONS

19 TAC §§12.1 - 12.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The repeal affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§12.1. Purpose.

§12.2. Authority.

§12.3. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801423
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§12.21 - 12.39

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The repeal affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§12.21. Degree Titles Authorized Under This Chapter.

§12.22. Fees.

§12.23. Exemption.

§12.24. Standards for Associate Degree-Granting Career Schools and Colleges.

§12.25. Application for a Certificate of Authority.

§12.26. Commissioner Action on an Application for a Certificate of Authority.

§12.27. Institutional Evaluation.

§12.28. Accreditation.

§12.29. Texas Success Initiative.

§12.30. Concurrent Instruction.

§12.31. Credit for Prior Learning.

§12.32. Transfer of Credit.

§12.33. Graduation and Job Placement Rates.

§12.34. Change of Ownership or Control.

§12.35. Complaints.

§12.36. Legal Proceedings.

§12.37. Withdrawal or Suspension of a Certificate of Authority.

§12.38. Closure of a Career School or College.

§12.39. The Associate of Occupational Studies (AOS) Degree.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801424
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER C. ASSOCIATE DEGREE PROGRAMS

19 TAC §§12.41 - 12.46

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132,

which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The repeal affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§12.41. New Program Application.

§12.42. New Program Approval.

§12.43. Program Revision.

§12.44. Contract Instruction.

§12.45. Evaluation of Program Effectiveness.

§12.46. Appeals Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801425
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1053

The Texas Education Agency (TEA) proposes new §102.1053, concerning the mathematics instructional coaches pilot program. The proposed new section replaces an earlier version that was filed as proposed in the January 4, 2008, issue of the *Texas Register* (33 TexReg 49), which has been withdrawn. Like the earlier version, the proposed new rule would implement the requirements of the Texas Education Code (TEC), §21.4541, as added by House Bill 2237, 80th Texas Legislature, which requires the commissioner by rule to establish and implement a Mathematics Instructional Coaches Pilot Program, including approval of service providers. The new proposal also addresses program requirements for the awarding of grants for the Mathematics Instructional Coaches Pilot Program.

Recognizing that too many students in Texas middle, junior high, and high schools fail to meet state standards in the area of mathematics, the Texas Legislature provided legislation aimed at addressing this critical achievement issue. House Bill 2237, 80th Texas Legislature, 2007, added the TEC §21.4541, establishing a pilot program under which participating school districts receive grants in order to contract with approved service providers for assistance in developing the content knowledge and instructional expertise of mathematics teachers at the middle school, junior high school, or high school level. The legislation requires that the commissioner establish the pilot program and adopt rules for its implementation.

Proposed new 19 TAC Chapter 102, Subchapter EE, §102.1053, would implement the TEC, §21.4541, by establishing the Mathematics Instructional Coaches Pilot Program. The earlier version being withdrawn addressed provisions specific to the identification and approval of service providers. Subsequent to that proposal, development of proposed provisions relating to school district participation was completed. Accordingly, the new rule proposes provisions that would define applicable words and terms and establish requirements relating to school district participation in the pilot program, including eligibility and conditions of operation. The proposal would also specify criteria and procedures by which approved service providers will be identified and approved to assist districts participating in the pilot program. Approved service providers must demonstrate significant past effectiveness in improving mathematics instruction in middle, junior high, and high schools serving a significant number of students identified as being at risk of dropping out of school, as described by the TEC, §29.081(d).

In addition to the entities described in the TEC, §21.4541(c), the proposed new rule would specify that county departments of education and school districts are eligible to apply for approval as service providers under this grant program and serve in that capacity. However, a school district designated as an approved service provider may not be reimbursed with Mathematics Instructional Coaches Pilot Program funds for providing coaching services to teachers employed by the district.

Grantees and service providers participating in the Mathematics Instructional Coaches Pilot Program would be required to adhere to all procedural, reporting, and evaluation requirements, as determined by the commissioner and outlined in program guidelines and requirements. Participating districts could use information already maintained locally to meet reporting requirements of the pilot program.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The proposal would establish in rule procedures for implementation of the Mathematics Instructional Coaches Pilot Program. The TEA was allocated $1,093,000 for each year of fiscal years 2008 and 2009 to award grants to eligible school districts.

Ms. Knaggs has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be the improved preparation of Texas secondary teachers, which would translate into increased learning and performance of students enrolled in Texas secondary schools. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no projected economic impact to small businesses but there may be economic impact to microbusinesses (businesses with fewer than 20 employees) that choose to apply for approved service provider status.

Economic Impact Statement. The proposed rule action could affect between 1-100 microbusinesses. Economic impact would be incurred if a microbusiness needed to hire additional employees in order to become an approved service provider. Microbusinesses would be impacted more than small businesses; however, microbusinesses are not required to participate in the pilot program. The proposed rule action would not affect any small

businesses or microbusinesses that did not choose to apply for approved service provider status. Nor would the proposal adversely impact microbusinesses that would not need to hire additional employees.

Regulatory Flexibility Analysis. The TEA assessed alternatives to the proposed rule action that would diminish the impact on microbusinesses; however, it is not possible to provide regulatory flexibility on this matter. One alternative could be to not adopt the rule. This is not an option because establishment of the standards is required by state law. Another alternative considered was to exempt microbusinesses from the rule. This is not an option because all service providers approved to assist school districts with the objectives of the pilot program must meet the same standards established by the commissioner. A third alternative considered was to reduce compliance or reporting requirements for microbusinesses. This is not an option because there are no burdensome requirements to reduce. All approved service providers would be required to submit uniform progress reports and basic program information for continued participation. Therefore, the TEA has considered several alternative methods and that analysis resulted in no alternate options.

The public comment period on the proposal begins March 21, 2008, and ends April 20, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new rule submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on March 21, 2008.

The new section is proposed under the Texas Education Code, §21.4541, which requires the commissioner by rule to establish and implement a mathematics instructional coaches pilot program, including the approval of service providers.

The new section implements the Texas Education Code, §21.4541.

§102.1053. Mathematics Instructional Coaches Pilot Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved service provider--An entity, as described in subsection (c) of this section, that has been approved through a request for qualifications (RFQ) process and designated by the commissioner of education as qualified to deliver intensive mathematics coaching and professional development to school districts approved to participate in the Mathematics Instructional Coaches Pilot Program.

(2) Mathematics Instructional Coaches Pilot Program--A pilot program established and implemented by the Texas Education Agency (TEA) in accordance with the Texas Education Code (TEC), §21.4541. Under the pilot program, participating school districts shall receive grants to provide teachers who instruct students in mathematics at the middle school, junior high school, or high school level with assistance in developing content knowledge and instructional expertise. Each participating school district must contract with an approved service provider.

(3) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(4) Shared services arrangement (SSA)--A shared services arrangement is an agreement between two or more school districts and/or education service centers that provides services for entities involved.

(b) Pilot program participation.

(1) Eligibility.

(A) Eligibility for participation in the Mathematics Instructional Coaches Pilot Program will be determined annually by the commissioner in accordance with the TEC, §21.4541, and eligibility criteria outlined in the TEC, §39.358.

(B) Education service centers (ESCs) established under the TEC, §8.001, are not eligible to apply for participation in the pilot program as the fiscal agent for an SSA or as a member in an SSA.

(2) Application process.

(A) An eligible school district must apply through the request for application (RFA) process to participate in the pilot program and include a description of how grant funds will be allocated.

(B) An eligible school district submitting an RFA on behalf of other school districts participating in an SSA must agree to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(C) Eligible applicants must meet all deadlines, requirements, and guidelines outlined in the RFA.

(3) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the Mathematics Instructional Coaches Pilot Program.

(4) Use of funds. The entire amount of a grant award must be used for the Mathematics Instructional Coaches Pilot Program as described in the RFA.

(5) Conditions of operation.

(A) Each successful applicant must operate a Mathematics Instructional Coaches Pilot Program in accordance with requirements detailed in the TEC, §21.4541, and must:

(i) select an approved service provider, as described in subsection (c) of this section, from the list provided by the TEA;

(ii) enter into a contractual relationship for mathematics instructional coaching and professional development services with the approved service provider; and

(iii) design and implement an action plan for the Mathematics Instructional Coaches Pilot Program in collaboration with the approved service provider.

(B) In addition, each successful applicant may enter into an SSA limited to no more than ten eligible districts. A school district may submit or be a member of an SSA for no more than one grant application.

(6) Program evaluation. Each school district operating an approved Mathematics Instructional Coaches Pilot Program must comply with evaluation procedures established by the commissioner as detailed in the RFA.

(7) Revocation for grantee.

(A) The commissioner may revoke grantee participation in the pilot program based on any of the following factors:

(i) noncompliance with requirements and assurances outlined in the RFA and/or the provisions of this section;

(ii) lack of program success as evidenced by progress reports and program data;

(iii) failure to meet performance standards specified in the RFA; or

(iv) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the pilot program.

(B) A decision by the commissioner to revoke authorization of a grant award is final and may not be appealed.

(8) Sanctions. The commissioner may audit the use of grant funds and impose sanctions on a school district for failure to comply with this section as authorized by the TEC, Chapter 39, as determined by the commissioner.

(9) Recovery of funds. As part of the sanctions described in paragraph (8) of this subsection, the commissioner may recover grant funds from any state provided funds.

(c) Approved service providers.

(1) Eligibility. The following entities that are TEA-certified continuing professional education providers are eligible to apply for approved service provider status:

(A) academies and training centers established in conjunction with a Texas Science, Technology, Engineering, and Mathematics (T-STEM) center;

(B) regional education service centers;

(C) institutions of higher education;

(D) private organizations with significant experience in providing mathematics instruction, as determined by the commissioner;

(E) county departments of education; and

(F) school districts, under the following condition. A school district's statewide assessments in mathematics (summed across all grade levels and for "All Students" only) must meet or exceed the Recognized standard. The TEA will determine eligibility, using the most current results, which can be found in the latest district Academic Excellence Indicator System (AEIS) report.

(2) Identification and selection. In accordance with the TEC, §21.4541(c) and (d), the TEA will identify and select approved service providers through a RFQ process. Failure to adhere to established RFQ requirements and assurances will result in non-selection as a service provider.

(3) Notification. The TEA will notify each applicant in writing of its selection or non-selection as an approved service provider.

(4) Condition of operation. A school district designated as an approved service provider may not be reimbursed with Mathematics Instructional Coaches Pilot Program funds for providing coaching services to teachers employed by the district.

(5) Renewal or revocation for service provider.

(A) Each approved service provider must submit a renewal application every two years in order to maintain eligibility to participate in the Mathematics Instructional Coaches Pilot Program as an approved service provider.

(B) The commissioner may deny renewal of or revoke participation in the Mathematics Instructional Coaches Pilot Program for a service provider based on any of the following factors:

(i) noncompliance with requirements and assurances outlined in the RFQ and/or the provisions of this section and the TEC, §21.4541;

(ii) lack of program success as evidenced by required progress reports and program data;

(iii) failure to meet performance standards specified in the RFQ;

(iv) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the service provider and the pilot program; or

(v) refusal to serve participants in the Mathematics Instructional Coaches Pilot Program.

(C) A decision by the commissioner to deny renewal or revoke approval of a service provider is final and may not be appealed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801374
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.63, §281.64

The Texas State Board of Pharmacy proposes amendments to §281.63, concerning Considerations for Criminal Offenses and §281.64, concerning Sanctions for Applicants with Criminal Offenses. The amendments, if adopted, clarify that the crime of driving while intoxicated is considered to be directly related to the duties and responsibilities of licensees and registrants, and clarify that the sanction guidelines apply to licensees and registrants including applicants. In addition, the amendments, if adopted, change the title of §281.64 from Sanctions for Applicants with Criminal Offenses to Sanctions for Criminal Offenses.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure that individuals licensed or registered to work in a pharmacy are qualified and ensure the public's safety. There is no fiscal im-

pact for individuals, small or large businesses or to other entities which are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., April 30, 2008.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.63. Considerations for Criminal Offenses.

(a) - (h) (No change.)

(i) The following crimes directly relate to duties and responsibilities of board licensees or registrants. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration, because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. In addition, the direct relationship to a license or registration is presumed when any crime occurs in connection with the practice of pharmacy or the operation of a pharmacy. The crimes are as follows:

(1) - (3) (No change.)

(4) a misdemeanor or felony offense under the Texas Penal Code involving:

(A) - (P) (No change.)

(Q) driving while intoxicated;

(R) [~~(Q)~~] solicitation of professional employment under the Penal Code §38.12(d) or Occupations Code, Chapter 102;

(S) [~~(R)~~] mail fraud; or

(T) [~~(S)~~] any criminal offense which requires the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(5) - (7) (No change.)

§281.64. Sanctions for [~~Applicants with~~] Criminal Offenses.

(a) The guidelines for disciplinary sanctions apply to criminal convictions and to deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, [~~for applicants~~] for all types of licensees and registrants including applicants for such licenses and registrations [~~licenses and registrations~~] issued by the board. The board considers criminal behavior to be highly relevant to an individual's fitness to engage in pharmacy practice. The "date of disposition," when referring to the number of years used to calculate the application of disciplinary sanctions, refers to the date a conviction, a deferred adjudication, or a deferred disposition is entered by the court. The use of the term "currently on probation" is construed to refer to individuals [~~applicants~~] currently serving community supervision or any other type of probationary term imposed by an order of a court for a conviction, deferred adjudication, or deferred disposition.

(b) (No change.)

(c) The board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in §281.63(g) and necessitate the disciplinary action listed below. The following sanctions apply to individuals [~~applicants~~] with the criminal offenses as described below:

(1) (No change.)

(2) Felony offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver, fraud, or theft of drugs:

(I) Currently on probation--denial or revocation;

(II) 0-5 years since date of disposition--denial or revocation;

(III) 6-10 years since date of disposition--denial or revocation;

(IV) 11-20 years since date of disposition--denial or revocation;

(V) (No change.)

(ii) Offenses involving possession of drugs:

(I) Currently on probation--denial or revocation;

(II) - (V) (No change.)

(B) Offenses involving sexual contact or violent acts, or offenses considered to be felonies of the first degree under the Texas Penal Code:

(i) Currently on probation--denial or revocation;

(ii) 0-5 years since date of disposition--denial or revocation;

(iii) 6-10 years since date of disposition--denial or revocation;

(iv) - (v) (No change.)

(C) Other felony offenses:

(i) Currently on probation--denial or revocation;

(ii) - (iv) (No change.)

(3) Misdemeanor offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver, fraud, or theft of drugs:

(I) Currently on probation--denial or revocation;

(II) - (III) (No change.)

(ii) (No change.)

(B) (No change.)

(C) Other misdemeanor offenses involving moral turpitude: 0-5 years since date of disposition--reprimand.

~~[(i) 0-5 years since date of disposition--2 years probation;]~~

~~[(ii) 6-10 years since date of disposition--reprimand;]~~

(d) When an individual [~~applicant~~] has multiple criminal offenses or other violations, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

(e) An individual [~~applicant~~] who suffers from an impairment as described by §565.001(a)(4) or (7) or §568.003(a)(5), may provide mitigating information including treatment, counseling, and monitoring in order to mitigate the sanctions imposed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801345
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.1, 283.2, 283.4 - 283.6

The Texas State Board of Pharmacy proposes amendments to §283.1, concerning Purpose, §283.2, concerning Definitions, §283.4, concerning Internship Requirements, §283.5, concerning Pharmacist-Intern Duties, and §283.6, concerning Preceptor Requirements. The amendments, if adopted, implement recommendations from the Task Force on Internship Requirements. The amendments, if adopted, update definitions and add a new definition for an intern-trainee; update the goals and objectives to be consistent with new guidelines set forth by the Accreditation Council for Pharmacy Education; outline the requirements for individuals applying to the Board as an intern-trainee; authorize the executive director to extend the terms of an extended internship if the administration of the NAPLEX and/or Texas Jurisprudence Examinations is delayed; clarify the duties that may be performed by an intern-trainee working under a pharmacist preceptor serving as an instructor for a Texas college/school-based internship program; define the ratios of preceptors to pharmacist-interns; and rename §283.6 to Preceptor Requirements and Ratio of Preceptors of Pharmacist-Interns.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure that individuals registered with the Board as pharmacist-interns are properly supervised and are qualified to work in a pharmacy. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., April 30, 2008.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.1. Purpose.

The purpose of this chapter is to provide a comprehensive, coherent regulatory scheme for the licensing of individuals [~~those~~] wishing to engage in the practice of pharmacy in this state. The provisions of this chapter govern in conjunction with the Texas Pharmacy Act (Chapters 551 - 566, and 568 - 569, Occupations Code, as amended) the method for the issuance of a certificate to act as a pharmacist in Texas. This chapter also provides a framework for any board-approved internship program.

§283.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education. [~~The American Council on Pharmaceutical Education.~~]

(2) - (7) (No change.)

(8) Direct supervision--A pharmacist preceptor or healthcare professional preceptor is physically present and on-site at the licensed location of the pharmacy where the pharmacist-intern is performing pharmacist-intern duties.

(9) [~~(8)~~] Extended-intern--An intern, registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has either:

(i) graduated and received a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(ii) completed all of the requirements for graduation and for receipt of a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(10) [~~(9)~~] Foreign pharmacy graduate--A pharmacist whose [~~undergraduate~~] pharmacy degree was conferred by a pharmacy school whose professional degree program has not been accredited by ACPE and approved by the board. [~~outside the United States by a pharmacy school listed in the World Directory of Schools of Pharmacy published by the World Health Organization. The United States, as used here, includes the 50 states, the District of Columbia, and Puerto Rico.~~]

(11) [~~(10)~~] FPGEC--The Foreign Pharmacy Graduate Equivalency Commission.

(12) [~~(11)~~] FPGEE--The Foreign Pharmacy Graduate Equivalency Examination, given by FPGEC.

(13) [~~(12)~~] Healthcare Professional--An individual licensed as:

(A) a physician in Texas or another state; or

(B) a pharmacist in a state other than Texas but not licensed in Texas. [~~in another state but who is not licensed in Texas.~~]

(14) [~~(13)~~] Healthcare Professional Preceptor--A healthcare professional serving as an instructor for a Texas college/school-based internship program who is recognized by a Texas college/school of pharmacy to supervise and be responsible for the activities and functions of a student-intern or intern-trainee [~~pharmacist-intern~~] in the internship program.

(15) Intern-trainee--A pharmacist intern, registered with the board, who is enrolled in the first year of the professional sequence of a Texas college/school of pharmacy and who may only work in a site assigned by a Texas college/school of pharmacy.

(16) [~~(14)~~] Internship--A practical experience program that is approved by the board.

(17) [~~(15)~~] MPJE--Multistate Pharmacy Jurisprudence Examination.

(18) [~~(16)~~] NABP--The National Association of Boards of Pharmacy.

(19) [~~(17)~~] NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

(20) [~~(18)~~] Pharm D--A doctorate in pharmacy.

(21) [~~(19)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(22) [~~(20)~~] Pharmacist-intern--An intern-trainee, a student-intern, or an extended-intern who is participating in a board approved internship program. [~~An undergraduate student enrolled in the professional sequence of a college of pharmacy who has successfully completed the first professional year and a minimum of 30 credit hours of work towards a professional degree in pharmacy and is participating in a board-approved internship program or an extended-intern participating in a board-approved internship program.~~]

(23) [~~(21)~~] Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the requirements under board rules and is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an [~~the~~] internship program.

(24) Preceptor--A pharmacist preceptor or a healthcare professional preceptor.

(25) [~~(22)~~] Professional degree--A baccalaureate in pharmacy (BS) or a doctorate [~~doctor~~] of pharmacy (Pharm D) degree.

(26) [~~(23)~~] State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(27) [~~(24)~~] Student-intern--A pharmacist-intern, registered with the board who is enrolled in the professional sequence of a college/school of pharmacy, [~~and~~] has completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy, and is participating in a board-approved internship program.

(28) [~~(25)~~] Texas Pharmacy Jurisprudence Exam or Texas Drug and Pharmacy Jurisprudence Examination--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

§283.4. Internship Requirements.

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population [~~pharmaceutical care to individual patients~~] and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection.

(A) Provides drug products. The pharmacist-intern shall demonstrate [~~acquire~~] competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and/or patients' agents [~~their care givers~~] about prescription drugs. The pharmacist-intern shall demonstrate [~~acquire~~] competence in interviewing and counseling patients, and/or the patients' agents [~~their care givers~~], on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse [~~side~~] effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and/or patients' agents [~~their care givers~~] about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate [~~acquire~~] competence in interviewing and counseling patients and/or patients' agents [~~their care givers~~] on conditions, [~~and~~] intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; [~~referring patients to other health professionals;~~] providing information on medical/surgical [~~and home health care~~] devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare [~~health~~] professionals and patients and/or patients' agents. [~~the public.~~] The pharmacist-intern shall demonstrate [~~acquire~~] competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. [~~Collaborates with physicians, other health-care professionals, patients and/or their care givers to develop a therapeutic plan which will include monitoring and evaluating drug therapy.~~] The pharmacist-intern shall demonstrate [~~acquire~~] competence in collaborating with physicians, other healthcare professionals, patients, and/or patients' agents [~~their care givers~~] to formulate a therapeutic plan. The pharmacist-intern shall demonstrate [~~acquire~~] competence in establishing and interpreting data-bases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; [~~to learn~~] to apply [~~good~~] professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate [~~acquire~~] competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; [~~dosage forms;~~] and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate [~~acquire~~] competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and/or the public. [~~selecting best available resources for answering a drug-related request in a timely fashion and in interpreting the information obtained and judging its relevance.~~]

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy development. [~~and policy-making.~~] The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe [~~learn to notice~~] and document discrepancies and irregularities, keep accurate records and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service or professional activities. [~~Understands the necessity of participating in public health and professional activities.~~] The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare [~~health~~] educator and a responsible participant in civic and professional organizations. [~~active participant in public health programs and professional organizations.~~]

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and/or refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociological, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and/or the public.

[~~(K) Conducts research. The pharmacist-intern may develop research skills to expand and/or refine knowledge in the areas of pharmaceutical sciences or pharmaceutical services. This includes data collection and analysis of scientific, clinical, sociological, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and the public.~~]

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or [~~of~~] more of the following methods:

(A) - (C) (No change.)

(2) - (3) (No change.)

(c) College-/School-Based [~~Student~~] Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she meets all of the following requirements:

(i) has made application to the board;

(ii) is enrolled in the professional sequence of a college/school of pharmacy whose professional degree program has been accredited by ACPE and approved by the board;

(iii) has successfully completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy; and

(iv) has met all requirements necessary in order for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a Texas college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires:

(i) if the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy whose professional degree program has been accredited by ACPE and approved by the board;

(ii) the student-intern fails the NAPLEX and/or Texas Jurisprudence Examinations specified in this section; or

(iii) the student-intern fails to take the NAPLEX and/or Texas Jurisprudence Examinations within three calendar months after graduation.

(B) The executive director of the board, in his/her discretion may extend the term of the student internship if administration of the NAPLEX or Texas Jurisprudence Examinations is suspended or delayed.

(3) [~~(1)~~] Texas colleges/schools of pharmacy internship programs.

(A) The board shall review for approval Texas colleges/schools of pharmacy internship programs [~~on or before September 1~~] of each fiscal year. The purpose of the board review will be to determine if such internship programs demonstrate that the competency objectives listed in subsection (a) of this section are [~~capable of~~] being met by each student-intern completing the internship. The board reserves the right to set conditions relating to the approval of such programs.

(B) The Texas colleges/schools of pharmacy shall determine [~~through examinations~~] that each student-intern completing the college/school internship program demonstrates through assessment [~~meets~~] the competency objectives listed in subsection (a) of this section.

(C) Internship experience shall be gained under a preceptor. [~~:~~]

~~*(i)* a pharmacist licensed by the board and approved as a preceptor by the board;~~

~~*(ii)* a pharmacist licensed in a state other than Texas when working in a federal facility and serving as an instructor for a Texas college-based internship program; or~~

~~*(iii)* a healthcare professional preceptor.~~

(D) All internship experience shall be approved by the board and shall occur in sites and under conditions which teach one or more of the competency objectives listed in subsection (a) of this section.

(E) Prior to taking the licensure examination any applicant participating in a Texas college/school-based internship shall complete the requirements of such internship.

(F) Intern-trainees and student-interns [~~Pharmacist-interns~~] completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. [~~will be awarded 1,500 hours of internship experience, or the number of hours actually obtained if greater than 1,500.~~] No credit shall be awarded for didactic experience.

(G) No more than 600 [~~300~~] hours of the required 1,500 hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy. [~~preceptor that is a healthcare professional~~].

(H) Individuals enrolled in the professional sequence of a Texas college/school of pharmacy whose professional degree program has been accredited by ACPE and approved by the board may be designated as a intern-trainee provided he/she meets all of the following requirements:

(i) has made application to the board;

(ii) is enrolled in the professional sequence of a college/school of pharmacy whose professional degree program has been accredited by ACPE and approved by the board; and

(iii) has met all requirements necessary in order for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs. Such internship shall remain in effect during the time the intern-trainee is enrolled in the first year of the professional sequence and shall expire upon completion of the first year of the professional sequence or upon separation from the professional sequence.

~~[(2) Internship experience acquired by student-interns not in a Texas College of Pharmacy Internship Program].~~

~~[(A) A person may be designated a student-intern provided he/she meets all of the following requirements:]~~

~~*[(i)* has made application to the board;]~~

~~*[(ii)* is enrolled in the professional sequence of a college of pharmacy whose professional degree program has been accredited by ACPE and approved by the board;]~~

~~*[(iii)* has successfully completed the first professional year and a minimum of 30 credit hours of work towards a professional degree in pharmacy; and]~~

~~*[(iv)* has met all requirements necessary in order for the Board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.]~~

~~[(B) The terms of the student internship shall be as follows.]~~

~~*[(i)* The internship shall be gained concurrent with college attendance, which may include:]~~

~~*[(I)* partial semester breaks such as spring breaks;]~~

~~*[(II)* between semesters; and]~~

~~*[(III)* whole semester breaks provided the student-intern attended the college in the immediate preceding semester and is scheduled with the college to attend in the immediate subsequent semester.]~~

~~*[(ii)* The student internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.]~~

~~*[(iii)* The student internship shall be in the presence of and under the direct supervision of a board-approved preceptor who is licensed by the board.]~~

~~[(C) None of the internship hours acquired may be substituted for any of the hours required in the Texas college of pharmacy internship program.]~~

~~[(3) Expiration date for student-intern designation. The student-internship remains in effect until the earlier of the following occurs:]~~

~~[(A) the student-intern voluntarily or involuntarily ceases enrollment in a college of pharmacy whose professional degree program has been accredited by ACPE and approved by the board;]~~

[(B) the failure of the student-intern to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation;]

[(C) upon receipt of the results of the NAPLEX and Texas Jurisprudence Examinations specified in this section.]

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has made application to the board and met one of the following requirements:

(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examination but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(C) - (E) (No change.)

(2) (No change.)

(3) The terms of the extended-internship shall be as follows.

(A) (No change.)

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor. [board-approved preceptor who is licensed by the board.]

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon [until the earlier of the following occurs]:

(A) the failure of the extended-intern to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation or Foreign Pharmacy Graduate Equivalency Commission (FPGEC) certification; or

(B) the failure of the extended-intern to pass the NAPLEX and Texas Jurisprudence Examinations specified in this section. [; or]

[(C) the failure of the extended-intern to complete the requirements for licensure within two years after passing the required examination(s).]

(5) The executive director of the board, in his/her discretion may extend the term of the extended internship if administration of the NAPLEX and/or Texas Jurisprudence Examinations is suspended or delayed.

(6) [(5)] An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) The board shall provide the pharmacist-intern written documentation of [his or her] designation as a pharmacist-intern. This written documentation serves as identification and authorization to perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties).

(2) - (3) (No change.)

(f) (No change.)

§283.5. Pharmacist-Intern Duties.

(a) A student-intern or an extended-intern [pharmacist-intern] participating in a board-approved internship program may perform any duty of a pharmacist provided the duties are delegated by and [he or she is] under the supervision of:

(1) - (2) (No change.)

(b) A pharmacist preceptor serving as an instructor for a Texas college/school-based internship program, may delegate the following duties to an intern-trainee working in a site assigned by a Texas college/school of pharmacy board approved program provided the intern-trainee is under the direct supervision of the pharmacist preceptor:

(1) initiating and receiving refill authorization requests;

(2) entering prescription data into a data processing system;

(3) taking a stock bottle from the shelf for a prescription;

(4) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids, and placing them in the prescription container);

(5) affixing prescription labels and auxiliary labels to the prescription container;

(6) reconstituting medication;

(7) prepackaging and labeling prepackaged drugs;

(8) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(9) bulk compounding;

(10) compounding non-sterile preparations provided the intern-trainee has completed the training required for pharmacists in §291.131 of this title (relating to Pharmacist Compounding Non-sterile Preparations);

(11) compounding sterile preparations provided the intern-trainee has completed the training required for pharmacists in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations); and

(12) administering immunizations provided the intern-trainee has completed the training required for pharmacists in §295.15 of this title (relating to Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician).

[(b) When working in a Texas college of pharmacy internship program, supervision of a pharmacist-intern shall be:]

[(1) direct supervision when the pharmacist-intern is engaged in functions associated with the preparation and delivery of prescription or medication drug orders; and]

[(2) general supervision when the pharmacist-intern is engaged in functions not associated with the preparation and delivery of prescription or medication drug orders.]

(c) When not under the supervision of a pharmacist preceptor [~~preceptor pharmacist~~], a pharmacist-intern may function as a pharmacy technician and perform all of the duties of a [~~registered~~] pharmacy technician without registering as a pharmacy technician provided the pharmacist-intern:

(1) - (3) (No change.)

(4) has completed the training required for pharmacists in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations); and [~~has completed a pharmacist training program in the preparation of sterile pharmaceuticals if the pharmacist-intern is compounding sterile pharmaceuticals; and~~]

(5) (No change.)

(d) A pharmacist-intern may not:

(1) - (2) (No change.)

(3) independently supervise pharmacy technicians or pharmacy technician trainees.

§283.6. Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns.

(a) Preceptor requirements.

(1) [~~(a)~~] Preceptors shall be:

(A) [~~(1)~~] a pharmacist whose license to practice pharmacy in Texas is current and not on inactive status with the board; or

[~~(2) a pharmacist licensed in a state other than Texas when working in a federal facility and serving as an instructor for a Texas college-based internship program; or~~]

(B) [~~(3)~~] a healthcare professional preceptor. [~~who is recognized by a Texas college of pharmacy.~~]

(2) [~~(b)~~] A pharmacist preceptor shall publicly display the pharmacist preceptor certificate with his/her license to practice pharmacy and the license renewal certificate.

(3) [~~(c)~~] To be recognized as a pharmacist preceptor, a pharmacist must:

(A) [~~(1)~~] have at least:

(i) [~~(A)~~] one year of experience as a licensed pharmacist in the type of internship practice setting; or

(ii) [~~(B)~~] six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health-System Pharmacists;

(B) [~~(2)~~] have completed:

(i) [~~(A)~~] for initial certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

(I) [~~(i)~~] developed by a Texas college/school of pharmacy; or

(II) [~~(ii)~~] approved by:

(-a-) [~~(I)~~] a committee comprised of the Texas colleges/schools of pharmacy; or

(-b-) [~~(II)~~] the board; or

(ii) [~~(B)~~] to continue certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the [~~preceptor~~] pharmacist's current license renewal period. Such training shall be:

(I) [~~(i)~~] developed by a Texas college/school of pharmacy; or

(II) [~~(ii)~~] approved by:

(-a-) [~~(I)~~] a committee comprised of the Texas colleges/schools of pharmacy; or

(-b-) [~~(II)~~] the board; and

(C) [~~(3)~~] meet the requirements of subsection (c) [~~(e)~~] of this section.

(b) Ratio of preceptors to pharmacist-interns.

(1) A preceptor may supervise only one pharmacist-intern at any given time (1:1 ratio) except as provided in paragraph (2) of this subsection.

(2) The following is applicable to Texas college/school of pharmacy internship program only.

(A) Supervision of a pharmacist-intern shall be;

(i) direct supervision when the student-intern or intern-trainee is engaged in functions associated with the preparation and delivery of prescription or medication drug orders; and

(ii) general supervision when the student-intern or intern-trainee is engaged in functions not associated with the preparation and delivery of prescription or medication drug orders.

(B) There is no ratio requirement for preceptors supervising intern-trainees and student-interns as a part of a Texas college/school of pharmacy when the intern-trainees and student-interns are not engaging in dispensing activities, patient counseling, or any activities requiring independent judgement.

(C) A preceptor for a Texas college/school of pharmacy internship program may supervise one intern-trainee and one student-intern at any given time.

(D) Texas college/schools of pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college/school based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college/school based, structured internship program.

(E) In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas college/school of pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas colleges/schools of pharmacy of the length of time a preceptor may supervise up to two interns.

[~~(d) A preceptor may supervise only one pharmacist-intern at any given time. Texas Colleges of Pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college based, structured internship program. In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas College of Pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas Colleges of Pharmacy of the length of time a preceptor may supervise up to two interns.~~]

(c) [~~(e)~~] No pharmacist may serve as a pharmacist preceptor if his or her license to practice pharmacy has been the subject of an order

of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a pharmacist preceptor or within the three-year period immediately preceding application for approval as a pharmacist preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a pharmacist preceptor. The board may consider the following items in approving a pharmacist's petition to act as a pharmacist preceptor:

(1) the type and gravity of the offense for which the pharmacist's license was disciplined;

(2) the length of time since the action that caused the order;

(3) the length of time the pharmacist has previously served as a preceptor;

(4) the availability of other preceptors in the area;

(5) the reason(s) the pharmacist believes he/she should serve as a preceptor;

(6) a letter of recommendation from a Texas college/school of pharmacy [~~College of Pharmacy~~] if the pharmacist will be serving as a pharmacist preceptor for a Texas college/school of pharmacy [~~College of Pharmacy~~]; and

(7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a pharmacist preceptor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801346
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31 - 291.34

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definition, §291.32, concerning Personnel, §291.33, concerning Operational Standards, and §291.34, concerning Records. The amendments, if adopted, incorporate recommendations made by the Task Force on Pharmacy Security in Community (Class A) Pharmacies; clarify the definition of the prescription department; clarify the responsibilities of the owner to include establishing polices and procedures for the security of the prescription department; outline the security requirements for Class A pharmacies; clarify the temporary absence requirements for pharmacists; require the pharmacy to document the identity of each pharmacist involved in a specific portion of the dispensing process if the pharmacy's data processing system is capable of recording such information; and require the pharmacy to document the identity of the pharmacist responsible for providing verbal counseling on a new prescription.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure the security of Class A pharmacies and will be to prohibit the diversion of prescription drugs from Class A pharmacies; ensure that pharmacists are accountable for the specific portion of the dispensing process that the individual performs; and ensure that pharmacists are accountable for providing verbal counseling on new prescriptions.

Ms. Dodson has determined the following fiscal impact for small businesses. Of the approximate 4,410 Community (Class A) pharmacies actively licensed in Texas, between 100 - 2,000 pharmacies may be considered a small business as defined in the in the Texas Government Code §2006.001(2). This number is based on the number of pharmacies licensed as independent pharmacies which would most likely include pharmacies with less than 100 employees. Pharmacies will be required to install a basic alarm system with off-site monitoring and perimeter and motion sensors. The agency has determined that the cost of systems varies based on selected features and physical size of the prescription department but estimates that the minimum economic impact to these pharmacies will be approximately $1,000 or less per year. This cost includes the installation of a system and monthly monitoring fees. Many pharmacies, including small businesses, already have some type of basic alarm system already in place so there will be no additional costs to these pharmacies.

Pharmacies will also be required to secure the prescription department with floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; or pull down sliders if the prescription department is closed when the rest of the facility is closed. This provision becomes only applies to new pharmcies licensed after June 1, 2009, or pharmacies that move to a new location. The Board can not predict the number of pharmacies that this provision may effect in the future, and since there are several options available for pharmacies to comply the Board is not able to determine a cost to comply.

Pharmacies that determine to maintain the required record of the counseling pharmacist on the data processing system will be required to update the computer system, if the computer system does not already store this information. The Board is unable to determine the cost because of the numerous vendors pharmacies use for computer systems and the undetermined programming cost for this change. However, the pharmacies have the alternative to record this information on the hard-copy prescription which does not have an associated cost.

Government Code, §2006.002, as amended by House Bill 3430, 80th Legislative Session, 2007, requires that before adopting a rule that may have an adverse economic effect on small businesses, a state agency must prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses, as provided above, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of a rule. As provided in guidelines established by the Office of the Attorney General, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the health,

safety and environmental and economic welfare of the state. The Board considers the amendments to §291.33 imperative to protect the health, safety, and welfare of the citizens of Texas and did not consider alternatives for complying with the proposed amendments. In addition, the costs of a basic alarm system as required to comply with the proposed amendments are nominal with respect to the cost of operating a pharmacy.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., April 30, 2008.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.31. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (36) (No change.)

(37) Prescription department--the area of a pharmacy that contains prescription drugs.

(38) [~~(37)~~] Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(39) [~~(38)~~] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(40) [~~(39)~~] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(41) [~~(40)~~] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(42) [~~(41)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(43) [~~(42)~~] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

§291.32. Personnel.

(a) (No change.)

(b) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) (No change.)

(2) establishment of polices and procedures for the security of the prescription department including the [~~and~~] maintenance of effective controls against the theft or diversion of prescription drugs;

(3) - (5) (No change.)

(c) Pharmacists.

(1) General.

(A) - (E) (No change.)

(F) A dispensing pharmacist shall be responsible for and ensure that the drug is dispensed and delivered safely, and accurately as prescribed, unless the pharmacy's data processing system can record the identity of each pharmacist involved in a specific portion of the dispensing processing, in which case each pharmacist involved in the dispensing process shall be responsible for and ensure that the portion of the process the pharmacist is performing results in the safe and accurate dispensing and delivery of the drug as prescribed. [~~In addition, if multiple pharmacists participate in the dispensing process, each pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing.~~] The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, including data entry of prescriptions placed on hold, packaging, preparation, compounding and labeling, and performance of the final check of the dispensed prescription.

(2) - (3) (No change.)

(d) - (e) (No change.)

§291.33. Operational Standards.

(a) (No change.)

(b) Environment.

(1) (No change.)

(2) Security.

(A) (No change.)

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department

must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; or pull down sliders. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location.

(ii) Effective, June 1, 2009, the pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) Effective, June 1, 2009, at a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such polices and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

~~[(B) The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on-site. However, the pharmacist-in-charge may designate persons who may enter the pharmacy to perform functions designated by the pharmacist-in-charge (e.g., janitorial services).]~~

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the absence does not exceed 30 minutes at a time and a total of one hour in a 12 hour period;

(IV) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(V) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the a pharmacist is off-site.

(iii) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

~~[(A) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:]~~

~~*[(i)* at least one registered pharmacy technician remains in the prescription department;]~~

~~*[(ii)* the pharmacist remains on-site at the licensed location of the pharmacy and available for an emergency;]~~

~~*[(iii)* the absence does not exceed 30 minutes at a time and a total of one hour in a 12 hour period;]~~

~~*[(iv)* the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians or other pharmacy personnel from the prescription department during his or her absence; and]~~

~~*[(v)* a notice is posted which includes the following information:]~~

~~*[(I)* the fact that pharmacist is on a break and the time the pharmacist will return; and]~~

~~*[(II)* the fact that pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist absence but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist returns and verifies the accuracy of the prescription.]~~

~~[(B) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:]~~

~~*[(i)* initiating and receiving refill authorization requests;]~~

~~*[(ii)* entering prescription data into a data processing system;]~~

~~*[(iii)* taking a stock bottle from the shelf for a prescription;]~~

~~*[(iv)* preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);]~~

~~*[(v)* affixing prescription labels and auxiliary labels to the prescription container provided the pharmacy technician:]~~

~~*[(I)* has completed the training requirements outlined in §297.6 of this title (relating to Pharmacy Technician Training); and]~~

~~*[(II)* is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements); and]~~

~~*[(vi)* prepackaging and labeling prepackaged drugs.]~~

~~[(C) Upon return to the prescription department, the pharmacist shall:]~~

~~*[(i)* conduct a drug regimen review as specified in subsection (c)(2) of this section; and]~~

[(ii) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.]

[(D) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent provided a record of the delivery is maintained containing the following information:]

[(i) date of the delivery;]

[(ii) unique identification number of the prescription drug order;]

[(iii) patient's name;]

[(iv) patient's phone number or the phone number of the person picking up the prescription; and]

[(v) signature of the person picking up the prescription.]

[(E) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.]

[(F) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.]

[(G) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.]

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) (No change.)

(B) Such communication:

(i) - (ii) (No change.)

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; [and]

(iv) effective, June 1, 2009, shall be documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record on either the original hard-copy prescription or in the pharmacy's data processing system; and

(v) [(iv)] shall be reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the consumer[, such as the USP DI patient information leaflets,] and printed in easily readable font size.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) - (D) (No change.)

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section. [or clause (ii) of this subparagraph.]

[(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours in a 24 hour period, and provided a record of the delivery is maintained containing the following information:]

[(I) date of the delivery;]

[(II) unique identification number of the prescription drug order;]

[(III) patient's name;]

[(IV) patient's phone number or the phone number of the person picking up the prescription; and]

[(V) signature of the person picking up the prescription.]

(ii) [(iii)] Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iii) [(iv)] A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) - (I) (No change.)

(2) - (7) (No change.)

(d) - (i) (No change.)

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) - (5) (No change.)

(6) Prescription drug order information.

(A) - (C) (No change.)

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy's data processing system:

(i) - (iv) (No change.)

(v) date of dispensing, if different from the date of issuance; [and]

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563; and [.]

(vii) effective June 1, 2009, for each new prescription the initials or identification code of the pharmacist responsible for providing counseling.

(7) Refills.

(A) - (D) (No change.)

(E) If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a [~~A~~] pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) (No change.)

~~*[(ii)* either:]~~

~~*[(I)* a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or]~~

~~*[(II)* the pharmacist is unable to contact the practitioner after a reasonable effort;]~~

(ii) [~~(iii)~~] the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) [~~(iv)~~] the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) [~~(v)~~] the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) [~~(vi)~~] the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) [~~(vii)~~] the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) [~~(viii)~~] if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) [~~and (ii)~~] of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) [~~(iii) - (v)~~] of this subparagraph.

(F) If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(c) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801347
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy proposes amendments to §291.104, concerning Operational Standards. The amendments, if adopted, clarify the labeling requirements for Class E pharmacies shipping prescriptions to Texas residents.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that out-of-state pharmacies shipping prescriptions to Texas residents include information on a prescription label to adequately identify the pharmacy. Ms. Dodson has determined that of the approximate 450 Class E pharmacies, less than 100 pharmacies may be considered a small business as defined in the Texas Government Code §2006.001(2). Although pharmacies are required to include certain information on prescription labels, there may be an economic impact to pharmacies if new labels are required to be printed or if there are programming costs associated with making changes to print the required information on the prescription label. It is difficult for the Board to determine these costs since these pharmacies are not located in Texas and there are numerous computer systems used by pharmacies. There is no fiscal impact for individuals which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 pm, April 30, 2008.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.104. Operational Standards.

(a) (No change.)

(b) Prescription dispensing and delivery.

(1) General.

(A) All prescription drugs and/or devices shall be dispensed and delivered safely and accurately as prescribed.

(B) The pharmacy shall maintain adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of packaging material and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(C) The pharmacy shall utilize a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(D) All Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(F) Subparagraph (E) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Drug regimen review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(i) inappropriate drug utilization;

(ii) therapeutic duplication;

(iii) drug-disease contraindications;

(iv) drug-drug interactions;

(v) incorrect drug dosage or duration of drug treatment;

(vi) drug-allergy interactions; and

(vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(3) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) shall be reinforced with written information. The following is applicable concerning this written information:

(I) Written information designed for the consumer, such as the USP DI patient information leaflets, shall be provided.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available.

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may orally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(E) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(4) Labeling. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, at the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(A) name, address, and phone number of the pharmacy;

(B) unique identification number of the prescription;

(C) date the prescription is dispensed;

(D) initials or an identification code of the dispensing pharmacist;

(E) name of the prescribing practitioner;

(F) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner;

(G) instructions for use;

(H) quantity dispensed;

(I) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(J) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(K) if the pharmacist has selected a generically equivalent drug, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(L) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant; and

(M) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

(i) The name shall be either:

(I) the brand name; or

(II) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(ii) Except as provided in subparagraph (K) of this paragraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801348
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.7

The Texas State Board of Pharmacy proposes amendments to §297.7 concerning Exemption from Pharmacy Technician Certification Requirements. The amendments, if adopted, clarify that pharmacy technicians that are exempted from the certification requirements are required to register with the Board and are not exempted from registration requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that individuals exempted from technician certification requirements are registered with the Board and are qualified to work in a pharmacy. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., April 30, 2008.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.7. Exemption from Pharmacy Technician Certification Requirements.

(a) - (b) (No change.)

(c) Rural county exempt pharmacy technicians. Rural county exempt pharmacy technicians are pharmacy technicians working in counties with a population of 50,000 or less and meet the following requirements.

(1) Eligibility. An individual may petition the board for an exemption from the certification requirements established by §568.002 of the Act (relating to Pharmacy Technician Registration Required) if the individual works in a county with a population of 50,000 or less.

(2) Petition process.

(A) An individual shall petition the board for the exemption. The petition shall contain the following:

(i) name of the individual;

(ii) name, address, and license number of the pharmacy where the individual is employed;

(iii) name of the county in which the pharmacy is located and the most recent official population estimate for the county from the Texas State Data Center;

(iv) a notarized statement signed by the individual stating:

(I) the reason(s) the individual is asking for the exemption, including reason(s) the individual has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved by the board; and

(II) that the information provided in the petition is true and correct; and

(v) a notarized statement signed by the pharmacist-in-charge of the pharmacy the individual is currently working, stating that the:

(I) pharmacist-in-charge supports the individual's petition for exemption;

(II) individual has completed the pharmacy technician training program at the pharmacy; and

(III) pharmacist-in-charge has personally worked with and observed that the individual is competent to perform the duties of a pharmacy technician.

(B) Each petition shall be considered on an individual basis. In determining whether to grant the exemption, the board shall consider the information contained in the petition and additional information including the following:

(i) the accuracy and completeness of the petition;

(ii) reason(s) the individual is asking for the exemption;

(iii) the population of the county;

(iv) the number of pharmacies located in the county and adjacent counties and the number of pharmacy technicians working in these pharmacies;

(v) unemployment rate in the county and adjacent counties; and

(vi) the following information concerning the pharmacy where the individual is currently working:

(I) the degree of compliance on previous compliance inspections; and

(II) history of disciplinary action by the board or other regulatory agencies against the licenses held by the pharmacy or pharmacists working at the pharmacy.

(C) After review of the petition, the individual and the pharmacist-in-charge of the pharmacy where the individual is working shall be notified in writing of approval or denial of the petition.

~~*[(i)* If the petition is approved, the individual shall be sent an exemption certificate, which shall be displayed at the pharmacy where the pharmacy technician is working.]~~

~~*[(ii)* In lieu of the exemption, the board may grant the individual up to an additional 12 months to take and pass the National Pharmacy Technician Certification Exam or other examination approved by the board. During this additional time, the individual shall be designated a pharmacy technician trainee.]~~

(D) If the petition is approved, the individual shall register with the board as a pharmacy technician.

(3) Limitations.

(A) The exemption granted under this section may only be used at the pharmacy noted in the petition and may not be transferred to another pharmacy. If the pharmacy technician ceases employment at the pharmacy or changes employment, the exemption is canceled.

(B) If the population of the county exceeds 50,000, the board shall cancel the exemption. The pharmacy technician and the

pharmacist-in-charge of the pharmacy shall be notified when an exemption is canceled.

(C) If the exemption granted under subparagraphs (A) or (B) of this paragraph is cancelled, the pharmacy technician's registration is void and the registration certificate must be surrendered to the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801349
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

22 TAC §309.3

The Texas State Board of Pharmacy proposes amendments to §309.3 concerning Generic Substitution. The amendments, if adopted, will implement S.B. 625 passed by the 80th Texas Legislature requiring a joint committee comprised of equal number of members from the Texas State Board of Pharmacy (TSBP) and the Texas Medical Board to make a recommendation to TSBP on whether to include a drug on the list of narrow therapeutic index (NTI) drugs as required by §562.0142. The Joint Committee met on November 19, 2007, to consider adding certain immunosuppressant drugs to the NTI list. The Joint Committee met on January 14, 2008, to consider adding certain epileptic drugs to the NTI list. The Joint Committee recommended on both occasions that no drugs be added to the NTI list. In addition, the amendments, if adopted, will rename Chapter 309 to Substitution of Drug Products.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of standards for generic substitution in Texas. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., April 30, 2005.

The amendments are proposed under §§551.002, 554.051, and 562.0141 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.014 as authorizing the Board in consultation with the Texas Medical Board, to establish by a rule a list of NTI drugs.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§309.3. Generic Substitution.

(a) - (b) (No change.)

(c) Dispensing directive.

(1) Written prescriptions.

(A) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(B) The dispensing directive shall:

(i) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(ii) comply with federal and state law, including rules, with regard to formatting and security requirements.

(C) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(D) A [~~After, June 1, 2002, a~~] practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

~~[(E) A written prescription drug order issued prior to June 1, 2002, but presented for dispensing on or after June 1, 2002, shall follow the substitution instructions on the prescription.]~~

(2) - (4) (No change.)

(d) (No change.)

(e) Refills.

(1) Original substitution instructions. All refills shall follow the original substitution instructions unless otherwise indicated by the practitioner or practitioner's agent.

~~[(A) All refills, shall follow the original substitution instructions, unless otherwise indicated by the practitioner or practitioner's agent.]~~

~~[(B) Prescriptions issued prior to June 1, 2002, on the two-line form shall follow the substitution instructions on the form.]~~

(2) Narrow therapeutic index drugs.

(A) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this paragraph applies to those drugs. The committee must consist of an equal number of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

(B) [(A)] The board, on the recommendation of the joint committee, [in consultation with the Texas State Board of Medical Examiners,] has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.013, Occupations Code.

(i) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacist shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. For drugs listed in the publications, pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(ii) Practitioners may prohibit substitution through a dispensing directive in compliance with subsection (c) of this section.

(C) [(B)] The board shall reconsider the contents of the list if: [the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products.]

(i) the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products; or

(ii) any interested person petitions the board to reconsider the list. If the board receives a petition to include a drug on the list, the joint committee specified in subparagraph (A) of this paragraph shall review the request and make a recommendation to the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801350
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 305-8028

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.62

The Texas Real Estate Commission (TREC) proposes an amendment to §535.62, concerning Acceptable Courses of Study.

The amendment to §535.62 changes the requirements for acceptability of correspondence courses offered to meet core education requirements for a real estate salesperson or broker license under the Real Estate License Act, Texas Occupations Code, Chapter 1101. Currently correspondence courses must be offered by an accredited college or university. Under the proposed amendment, TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by schools accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet education requirements for a real estate salesperson or broker license under the Real Estate License Act.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There will not be an adverse economic impact on small businesses and micro-businesses as a result of implementing the amendment. The economic cost to persons who are required to comply with the proposed section will be the fee associated with becoming accredited by TREC if the person is not already a TREC accredited school, currently $400.

The proposed amendments contain provisions for licensed proprietary schools to continue operating in the same manner as currently established with the additional ability to offer correspondence courses. Further, businesses that have existing relationships with colleges and universities are not precluded from maintaining the relationship, but they will also be able to independently offer approved correspondence courses if the businesses become accredited or licensed with TREC.

Ms. Alexander also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be that existing TREC education providers will be able to independently offer correspondence courses that applicants and licensees may use for education credit.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.62. Acceptable Courses of Study.

(a) - (c) (No change.)

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1) - (4) (No change.)

(5) For a correspondence course[, the course must have been offered by an accredited college or university, and students receiving credit for the course must pass either]:

(A) the course must have been offered by:

(i) an accredited college or university:

(ii) a school accredited by the commission; or

(iii) a real estate regulatory agency of another state.

(B) Students receiving credit for the course must pass either:

(i) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(ii) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

[(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or]

[(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.]

(6) - (9) (No change.)

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801273
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

The amendments to §535.71 change the requirements for approval of correspondence courses offered to meet mandatory continuing education (MCE) requirements for a real estate salesperson or broker license under the Real Estate License Act, Texas Occupations Code, Chapter 1101. Currently correspondence courses must be offered by an accredited college or university. TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by a school accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet mandatory continuing education requirements for a real estate salesperson or broker license under the Real Estate License Act.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There will not be an adverse economic impact on small businesses and micro-businesses as a result of implementing the amendments.

The economic cost to persons who are required to comply with the proposed section will be the fees associated with becoming a TREC MCE provider if the person is not already a TREC provider. The proposed amendment contains provisions for MCE providers to continue operating in the same manner as currently established with the additional ability to offer correspondence courses. Further, businesses that have existing relationships with colleges and universities are not precluded from maintaining the relationship, but they will also be able to independently offer approved correspondence courses if the businesses become a TREC MCE provider.

Ms. Alexander also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be that existing TREC MCE providers will be able to independently offer correspondence courses that applicants and licensees may use for MCE credit.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

(a) - (w) (No change.)

(x) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

[(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;]

(1) [(2)] the content of the course must satisfy the requirements of the Act, §1101.455, and these sections; and

(2) [(3)] the course does not include a request for required legal course credit.

(y) (No change.)

(z) Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

~~[(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;]~~

(1) ~~[(2)]~~ the content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission;

(2) ~~[(3)]~~ students receiving MCE credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(3) ~~[(4)]~~ written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

(aa) - (hh) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801274
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER I. LICENSES

22 TAC §535.92, §535.95

The Texas Real Estate Commission (TREC) proposes amendments to §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education (MCE) Requirements and §535.95, concerning Miscellaneous Provisions Concerning License or Registration Renewals.

The amendments to §535.92(f) change the procedure for licensees who choose to pay an MCE deferral fee under §1101.457, Texas Occupations Code to defer MCE requirements for an additional 60 days after the date the license is renewed. If a licensee fails to timely pay the deferral fee or fails to complete the MCE requirements within the 60-day period, the license will be placed on inactive status. To reactivate the license, the licensee must pay an additional $250 fee, pay the original $200 deferral fee, complete the MCE requirements, certify that the licensee has not engaged in real estate brokerage activity, and pay the appropriate change fee.

The amendments to §535.92(h) change the requirements for approval of correspondence courses offered to meet MCE requirements for a real estate salesperson or broker license under the Real Estate License Act, Texas Occupations Code, Chapter 1101. Currently correspondence courses must be offered by an accredited college or university. TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by a school accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet mandatory continuing education requirements for a real estate salesperson or broker license under the Real Estate License Act.

The amendments to §535.95 are proposed to clarify recent amendments to the Real Estate License Act (the Act), Texas Occupations Code, Chapter 1101, enacted by House Bill 1530, 80th Legislative Session, Regular Session, regarding fingerprinting requirements. The amendments would clarify fingerprinting requirements in cases where a licensee renews a license, has been fingerprinted, and the fingerprints have been rejected by the DPS or the FBI. The proposed amendments to §535.95 amend the text of the title of the section and authorize the commission to renew a salesperson or broker license on active status if the licensee has provided at least one set of fingerprints to the Department of Public Safety (DPS), the fingerprints were rejected by the DPS or the Federal Bureau of Investigation (FBI), and the licensee has met all other requirements for renewal of the license including paying a renewal fee and completing or properly deferring MCE (MCE) requirements. In some cases the DPS or the FBI requires that the licensee, at no additional cost, submit additional data or more fingerprints if the first set of fingerprints were rejected for technical reasons. The proposed rule authorizes the commission to issue the license in such cases if the licensee has otherwise complied with all other renewal requirements, and requires the commission to notify the licensee that the licensee needs to contact the DPS to submit additional fingerprints. The proposed rule authorizes the commission to take disciplinary action against a licensee for failing to provide the requested data in a timely manner.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments to §535.92(f) are in effect there will be fiscal implications for the state, but not for units of local government as a result of enforcing or administering the sections. The Enforcement Division currently assesses administrative penalties against approximately 120 licensees per year for failing to timely complete MCE under §1101.456, Texas Government Code. If the trend continues the fiscal impact will be approximately ten licensees a month paying the $250 late reporting fee in lieu of administrative penalties producing $5,000 additional revenue for fiscal year 2008, $30,000 for 2009, $30,000 for 2010, $30,000 for 2011, $30,000 and $30,000 for 2012.

Ms. Alexander has determined that for the first five-year period the amendments to §535.92(g) and §535.95 are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing any of the amendments. There is no anticipated adverse impact on small businesses and micro-businesses.

There is no anticipated economic cost to persons who are required to comply with the proposed amendments to §535.92(f). The proposed amendment to §535.92(f) merely changes the pro-

cedure so that rather than paying an administrative penalty, the licensee will pay a late reporting fee to reactivate his or her license. The economic cost to persons who are required to comply with the proposed amendments to §535.92(g) will be the fees associated with becoming a TREC MCE provider if the person is not already a TREC MCE provider. There is no anticipated economic cost to persons who are required to comply with the proposed amendments to §535.95.

Ms. Alexander also has determined that for each year of the first five years the amendments to §535.92(f) are in effect the public benefit anticipated as a result of enforcing the amendment will be fewer cases referred to enforcement for persons who fail to comply with the late MCE requirements as such licenses will automatically go on inactive status if the licensee fails to timely comply. For each year of the first five years the amendments to §535.92(g) are in effect the public benefit anticipated as a result of enforcing the amendment will be that existing TREC MCE providers will be able to independently offer correspondence courses that applicants and licensees may use for MCE credit. For each year of the first five years the amendments to §535.95 are in effect the public benefit anticipated as a result of enforcing the amendment will be clarification of fingerprinting requirements in cases where there have been technical difficulties obtaining the fingerprint so that the license may be issued if the licensee has otherwise met all other requirements for renewal of the license.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914 and House Bill 1530, 80th Legislature, Regular Session. No other statute, code or article is affected by the proposed amendments.

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

(a) - (e) (No change.)

(f) Notwithstanding any provisions of the Act to the contrary, when a licensee in an active status files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable MCE requirements, the commission shall renew the current license in an active status. [~~and notify the licensee in writing that if the licensee has not completed the required number of hours of MCE courses prior to the expiration date of the current license, the licensee must pay an additional fee of $200 and complete the required number of hours of MCE courses within 60 days after the effective date of the new license. For the purpose of this section, a renewed license is effective the day following the expiration of the current license. If the licensee does not complete the required number of hours of MCE courses prior to the expiration date of the current license, the licensee shall complete the required number of hours of MCE courses and pay the additional fee within 60 days after the effective date of the new license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license. Original applications and return to active status are subject to MCE requirements imposed by the Act.~~]

(1) If the licensee has not completed MCE requirements prior to the expiration of the current license, the licensee must, within 60 days after the effective date of the new license, pay an additional MCE deferral fee of $200 AND complete the required number of MCE hours.

(2) If, within 15 days after the end of the 60 day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the required number of MCE hours and paid the MCE deferral fee of $200, the renewed license shall be placed on inactive status.

(3) In order to reactivate a license placed on inactive status under this subsection, the licensee must:

(A) provide the commission with evidence that the licensee has completed the required MCE hours;

(B) certify, on a form acceptable to the commission, that the licensee has not engaged in activity requiring a license at any time after the license became inactive;

(C) complete and submit a Request to Return to Active Status Form if a broker or a Salesperson Sponsorship Form if a salesperson and pay the appropriate fee;

(D) if the license was placed on inactive status because the licensee failed to timely pay the $200 MCE deferral fee required by paragraph (1) of this subsection, the licensee must, because the licensee received the benefits of the 60-day deferral, pay the $200 MCE deferral fee; and

(E) pay a late reporting fee of $250.

(4) For the purpose of this section, a renewed license is effective the day following the expiration of the current license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license.

(g) (No change.)

(h) A course taken by a Texas licensee to satisfy continuing education requirements of another state may be approved on an individual basis for MCE elective credit in this state upon the commission's determination that:

(1) (No change.)

(2) the course was approved for continuing education credit for a real estate license by the other state [~~and, if a correspondence course, was offered by an accredited college or university~~];

(3) - (5) (No change.)

(i) - (m) (No change.)

§535.95. Miscellaneous Provisions Concerning License or Registration Renewals, Including Fingerprinting Requirements.

(a) - (d) (No change.)

(e) To provide for an orderly implementation of fingerprinting requirements and minimize disruption of licensure, the commission may issue a renewal license on active status if the licensee has provided at least one set of fingerprints to the Department of Public Safety (DPS), the fingerprints were rejected by the DPS or the Federal Bureau of Investigation FBI, and the licensee has otherwise complied with all other renewal requirements. If it is subsequently determined that the DPS or the FBI requires additional data from the licensee to complete a criminal history record check, the commission shall so notify the licensee. The commission may take disciplinary action against a licensee for failing to provide the requested data within a reasonable time, as specified in the notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801275
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to §535.101, concerning Fees.

The proposed amendments add a fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal. The fee is variable, but is currently set at $19.25. The amendments also propose a late reporting fee of $250 for licensees who fail to timely comply with the requirements of 22 TAC §535.92(f). Under §1101.457, Texas Occupations Code, a licensee may pay a $200 MCE deferral fee to defer MCE requirements for an additional 60 days after the date the license is renewed. If a licensee fails to timely pay the deferral fee or fails to complete the MCE requirements within the 60-day period, the license will be placed on inactive status under proposed amendments to 22 TAC §535.92(f). To reactivate the license, the licensee must pay the $250 late reporting fee, pay the original $200 deferral fee, complete the MCE requirements, certify that the licensee has not engaged in real estate brokerage activity, and pay the appropriate change fee.

Karen Alexander, Staff Services Director, has determined that for the first five-year period new §535.101(b)(17) is in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering §535.101(b)(17). The current fee that the Federal Bureau of Investigation charges for federal criminal history record checks is $19.95. Approximately 180 applicants may be required to pay the fee in Fiscal Year 2008 for total estimated revenue of $3,465. For Fiscal Year 2009, approximately 1,080 applicants, and 14,400 Salesperson Annual Education renewal licensees are estimated to be required to pay the fee for total estimated revenue of $301,455. For each of the three years after (2010 - 2012), approximately 1,080 applicants, and 21,600 Salesperson Annual Education renewal licensees are estimated to be required to pay the fee for a total estimated revenue of $436,590 per year. This estimate does not include estimated revenue for 2-year license renewals as implementation of those costs will not begin until 2010.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 150,000 real estate brokers and salespersons licensed in Texas. It is estimated that nearly all of these entities are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be slightly negative due to a required fee, currently set at $19.25 by the Federal Bureau of Investigation to conduct a national criminal history record check. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposed rule in accordance with a legislative mandate. Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander has determined that for the first five-year period new §535.101(b)(18) is in effect there will be fiscal implications for the state, but not for units of local government as a result of enforcing or administering the sections. The Enforcement Division currently assesses administrative penalties against approximately 120 licensees per year for failing to timely complete MCE under §1101.456, Texas Government Code. If the trend continues the fiscal impact will be ten licensees per month paying the $250 late reporting fee in lieu of administrative penalties producing $5,000 additional revenue per fiscal year for 2008, $30,000 for 2009, $30,000 for 2010, $30,000 for 2011, and $30,000 for 2012. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

There is no anticipated impact on local or state employment as a result of implementing new §535.101(b)(18). There is no anticipated adverse impact on small businesses and micro-businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule. The proposed new §535.101(b)(18) merely changes the procedure so that rather than paying an administrative penalty, a licensee who fails to timely comply with the late MCE requirements will pay a late reporting fee to reactivate his or her license.

Ms. Alexander also has determined that for each year of the first five years new §535.101(b)(17) is in effect the public benefit anticipated as a result of enforcing the amendment is that a national criminal history check will be conducted on every renewal of a real estate salesperson and broker license. For each year of the first five years new §535.101(b)(18) is in effect the public benefit anticipated as a result of enforcing the amendment will be fewer cases referred to enforcement for persons who fail to comply with the late MCE requirements as such licenses will automatically go on inactive status if the licensee fails to timely comply.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) - (14) (No change.)

(15) a fee of $45 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; [~~and~~]

(16) a fee of $60 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year; [~~.~~]

(17) the fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal; and

(18) a late reporting fee of $250 to reactivate a license under §535.92(f) of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801276
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission (TREC) proposes amendments to §535.212, concerning Education and Experience Requirements for an Inspector License.

The amendments to §535.212 changes the requirements for acceptability of correspondence courses offered to meet core and continuing education requirements for a real estate and professional home inspector license under Texas Occupations Code, Chapter 1102. Currently correspondence courses must be offered by an accredited college or university. Under the proposed amendments, TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by schools accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet core and continuing education requirements for a home inspector license in Texas.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There will not be an adverse economic impact on small businesses and micro-businesses as a result of implementing the amendments. The economic cost to persons who are required to comply with the proposed amendments will be the fees associated with becoming accredited by TREC if the person is not already a TREC accredited proprietary school or MCE provider. The proposed amendments contain provisions for licensed proprietary schools and Mandatory Continuing Education (MCE) providers to continue operating in the same manner as currently established with the additional ability to offer correspondence courses. Further, businesses that have existing relationships with colleges and universities are not precluded from maintaining the relationship, but they will also be able to independently offer approved correspondence courses if the businesses become accredited or licensed with TREC.

Ms. Alexander also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be that existing TREC education providers will be able to independently offer correspondence courses that applicants and licensees may use for education credit.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914 and House Bill 1530, 80th Legislature, Regular Session. No other statute, code or article is affected by the proposed amendments.

§535.212. Education and Experience Requirements for an Inspector License.

(a) Education requirements.

(1) - (2) (No change.)

(3) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). [~~Correspondence courses are acceptable only if offered by an accredited college or university.~~]

(4) - (9) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801277
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

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CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.2, 543.4, 543.10

The Texas Real Estate Commission (TREC) proposes amendments to §543.2, concerning Amendments; §543.4, concerning Forms; and §543.10, concerning Escrow Requirements.

The amendments change the notice requirements for developers to notify TREC of a change in the amount of a surety bond under §221.063(a) of the Texas Timeshare Act. Currently, a developer is required to file an amendment to a registration if there is a change of more than 20% in the amount of an original surety bond. The amendment would delete that requirement to amend the registration, but a developer would be required to notify the commission of any increase or decrease in the original surety bond as provided for in §221.063(a) of the Texas Timeshare Act.

The amendment to §543.4 would adopt by reference an amended Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-2 to make the form consistent with the text in the Application to Register a Timeshare Plan, Form TSR 1-4.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses and micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be more efficiency and cost savings in reporting required information to TREC.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Government Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of the Texas Timeshare Act.

The statute which is affected by this proposal is Texas Property Code, Chapter 221. No other statute, code or article is affected by the proposed amendments.

§543.2. Amendments.

(a) - (b) (No change.)

(c) "Material" includes, but is not limited to:

(1) - (6) (No change.)

~~[(7) a change of more than 20% in the amount of an original surety bond;]~~

(7) [~~(8)~~] if applicable, an increase of more than 20% in an original alternative assurance as defined by Section 221.063(a) of the Texas Timeshare Act;

(8) [~~(9)~~] a change to a substantive provision of the escrow agreement between the escrow agent and the developer;

(9) [~~(10)~~] a change of management company; or

(10) ~~(11)~~] a change to a substantive provision of the management agreement.

(d) - (g) (No change.)

§543.4. Forms.

(a) - (b) (No change.)

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-2 [~~1~~], approved by the commission in 2008 [~~2006~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(d) - (j) (No change.)

§543.10. Escrow Requirements.

(a) For purposes of Section 221.063(a) of the Texas Timeshare Act, the alternative financial assurance from another state or jurisdiction must be for the same timeshare plan as the timeshare plan being registered or registration being amended.

(b) A timeshare developer shall, within 10 days of the change, provide the commission with written notice of any increase or decrease in the original surety bond as provided for in Section 221.063(a) of the Texas Timeshare Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801278
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 100. IMMUNIZATION REGISTRY

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§100.1 - 100.6, repeal of §100.7 and §100.8, and new §§100.7 - 100.10, concerning the Texas Immunization Registry (the Registry).

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 100.1 - 100.8 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed, although current language in §100.7 and §100.8 is

being renumbered as §100.9 and §100.10 (respectively), with minor changes, so that entirely new language can be proposed as new §100.7 and §100.8. This rulemaking also proposes amendments that would implement portions of Senate Bill (SB) 11, 80th Legislature, Regular Session (2007), which amended Health and Safety Code (the Code), Chapter 161. This rulemaking proposal would also make various clarifying amendments designed to improve the efficiency and readability of these rules sections.

The proposed amendments, repeal, and new sections update the agency, division, section, and branch names, reorder text and sections to improve rule clarity and efficiency, and implement SB 11 requirements.

SECTION-BY-SECTION SUMMARY

Section 100.1(2) is proposed to be amended to clarify that a managing conservator or legal guardian can also grant the requisite consent. Section 100.1(3) is proposed to be amended to reflect the language of the Code, §161.0001(1), including amendments made by SB 11. Section 100.1(4) is proposed to be amended to reflect the current name of the department. Existing §100.1(5) is proposed to be renumbered as §100.1(9) and to be amended by changing "child" to "person" to reflect SB 11 requirements. Existing §100.1(6) and (7) are proposed to be renumbered as §100.1(10) and (11), respectively. Existing §100.1(8) is proposed to be deleted as confusing and unnecessary language, and is proposed to be replaced with a new definition for "immediate family member" to reflect the requirements of SB 11. Existing paragraphs (9), (10), and (11) in §100.1 are proposed to be renumbered to §100.1(12), (14), and (17), respectively. Existing §100.1(12) is proposed to be renumbered to §100.1(18), with "a person" replacing "children" in order to reflect SB 11 requirements. New definitions are proposed to be numbered as paragraphs (5) - (8), (13), (15), and (16) to implement SB 11 requirements.

Section 100.2(a) is proposed to be amended to reflect amendments made to the Code, §161.0073(a) by SB 11, and is also proposed to be amended by adding language to reflect that a managing conservator or legal guardian may also offer the required consent. Section 100.2(b) is proposed to be amended by adding a statement which expressly states that Registry information may only be accessed by the persons listed in rule, for the purposes enumerated in the rule. Further amendments are proposed to reflect the new classes of persons brought into the regulatory scheme by SB 11. Amendments are also proposed at subsection (b) to reflect that a managing conservator or legal guardian may also offer the required consent.

Section 100.3 is proposed to be amended by changing the section title to reflect that "guardian" is a reference to a "legal guardian." Section 100.3(a) is proposed to be amended to add managing conservators and legal guardians to the list of those to be informed under the requirement, along with a cross-reference to the method to be used. The subsection is also proposed to be amended by adding language that reflects changes to §161.007(a) of the Code made by SB 11. Section 100.3(b) is proposed to be amended to add managing conservators and legal guardians to the list of persons that will receive the referenced materials. Section 100.3(c) is proposed to be amended to add managing conservators and legal guardians to the list of persons that may receive the referenced notices. Section 100.3(d) is proposed to be amended to add managing conservators and legal guardians to the list of persons that will receive the referenced notices. Section 100.3(d)(6) is proposed to be amended to add managing conservators and legal guardians to the list of persons regarding reporting the referenced violation, and to insert "alleged" in front of "violation" to reflect that such a violation will not have been proven at that point of the process.

Section 100.4 is proposed to be amended by changing the section title, and subsection (a), to reflect that this rule section is only applicable to Registry consent and withdrawal relating to minors, since these same issues will be dealt with separately in new §100.7 and §100.8 regarding SB 11 requirements as to certain adults. Section 100.4(a)(2) is proposed to be amended by updating the current name and contact information of the department. Existing subsection (b) is proposed to be renumbered as subsection (c), with a new subsection (b) proposed to be inserted which describes the consent process by which information on minors is included in the Registry. In the new subsection (b), the cross-reference to new §100.7 is necessary because SB 11 provides for inclusion of information regarding minors into the Registry without consent (and therefore without consent needing to be verified) in the limited situations described in the new rule section. New subsection (b) would also specify how the department will handle consent verifications in situations involving minors where such verification is required, which is authorized under the authority given to the department under changes to the Code, §161.007(a)(5) made by SB 11. This process is designed to maximize efficiency of Registry operations. Existing subsection (c) is proposed to be renumbered as new subsection (d), and is proposed to be amended to add managing conservators and legal guardians to the list of persons regarding withdrawal of consent, and is also proposed to be amended by adding a cross-reference to new §100.7 to reflect the exception to the ability to withdraw consent, per SB 11. Existing subsection (d) is proposed to be renumbered as new subsection (e), and is proposed to be amended to add managing conservators and legal guardians to the list of persons who may request exclusion of the information, while paragraph (2) updates the department's current name and contact information and also includes a cross-reference to new §100.7 to reflect the exception to the ability to request exclusion, per SB 11.

Section 100.5 is proposed to be amended by renumbering the existing subsection (a) as a new subsection (b), with changes that: reflect the new classes of persons brought into the Registry via SB 11; clarify that managing conservators and legal guardians are included in the list of persons who can submit the referenced information; improve readability; and expressly state that submissions of the referenced information must be according to department requirements. A new subsection (a) is proposed which would provide an updated comprehensive list of the classes of persons who will have information contained in the Registry, given SB 11 requirements. Existing subsection (b) is proposed to be renumbered as new subsection (c), with changes that reflect the new classes of persons brought into the Registry via SB 11, as well as changes to improve readability. Existing subsection (c) is proposed to be renumbered as new subsection (e), with changes that: effectively reflect the statutory scheme for release of immunization records; expressly states the limitations of use (if any) for each class of person listed, to prohibit parties allowed direct access to the Registry from viewing records beyond those they are authorized to see, given state and federal confidentiality laws; and expressing the limitation of direct electronic access to the Registry, which is necessary due to resource constraints of the department and is advisable to help preserve confidentiality. Existing subsection (d) is proposed to be renumbered as subsection (h), with changes that better express lia-

bility limitations by cross-referencing the applicable Code provision, rather than attempting to paraphrase statutory language. A new subsection (d) is proposed to concisely set out the methods the department has to choose from when verifying consent, under the authority granted the department under §161.007(a)(5) of the Code as amended by SB 11. Existing subsection (e) is proposed to be renumbered as new subsection (i), with changes to reflect the new classes of persons brought into the Registry via SB 11. New subsection (f) is proposed to provide a cross-reference to new §100.7 regarding release of information under the scenarios described in that rule. New subsection (g) is proposed to provide a cross-reference to new §100.8 relating to release of information regarding first responders and their immediate family under that rule.

Section 100.6 is proposed to be amended by adding language to the section title which states that the section covers medical verifications as well, and that the entire section is applicable only to minors (as opposed to adults added to the Registry scheme under SB 11, which will be covered elsewhere in the rules). Subsection (a) is proposed to be amended for readability and clarity. Subsection (b) is proposed to be amended by deleting confusing and outdated text and replacing it with a clear statement regarding the providers' obligation to submit the required data elements to the department within the stated 30 day deadline. Subsection (c) is proposed to be amended in a manner similar to subsection (b), except that (c) is applicable to applicable payors as opposed to providers. Subsection (d) is proposed to be amended by adding managing conservator and legal guardian to the list of persons who can provide a child's immunization history to the department. Existing subsection (e) is proposed to be deleted because its subject matter will be covered under other provisions under this section as reorganized. Existing subsection (f) is proposed to be renumbered as subsection (e), with changes to improve clarity. Existing subsection (g) is proposed to be renumbered as subsection (f).

The text in existing §100.7 and §100.8 is proposed to be moved to §100.9 and §100.10, respectively, with changes as part of the reorganization of this subchapter (see discussion of proposed changes as follows).

New §100.7 is being proposed to implement changes to the Code, Chapter 161, amended by SB 11 regarding the following scenarios: potential and declared disasters; public health emergencies; terrorist attacks; hostile military or paramilitary actions; and/or extraordinary law enforcement emergency events. SB 11 mandates a major expansion in the existing scope of the Registry. Under that legislation, the Registry must contain specified information regarding persons who receive an immunization, antiviral, and/or other medication administered to prepare for, and/or in response to, the listed scenarios--as stated in proposed new subsection (a) of the section. The provider deadline to submit data elements is set at 30 days in the new subsection (b). This will allow the Registry to reflect an accurate picture of the immunizations, etc. being administered in the emergency so that information will be available to those who need it. SB 11 amends §161.00705 of the Code to include requirements for the department to track adverse reactions in these situations, and proposed new rule subsection (c) implements this requirement. The rule language states that such tracking will be based on reports the department receives from health care providers, as opposed to being based on an impractical attempt by the department to proactively contact all providers who were active in any given disaster/emergency. The statute does not make such reporting mandatory for providers, and the agency does not have the resources to attempt to identify and contact all these providers who administered health care during the emergency. SB 11 provides that consent is not necessary for the health care information at issue to be included in the Registry, but goes on to charge the agency with determining the time period following the disaster/emergency event after which consent would be required for continued inclusion. Department Preparedness Program staff have analyzed this situation, using their long expertise in public health and emergency management in Texas, and have determined that the appropriate time period is five years after the end date of the emergency scenario. Reasons for choosing this time period are based on public health needs:

(1) The five year period is commonly used as the interval for when boosters are recommended (e.g., tetanus, pneumonia if >64 years). To avoid over-immunizing individuals under proposed §100.7, and to avoid the costs of revaccinating persons who don't keep personal records, a five-year period in the Registry would be sufficient for record-checking purposes.

(2) Adequate time is needed to track individuals with adverse reactions that are reported to the department by the providers at issue. It is currently unknown how many adverse reactions will result from use of antiviral drugs, antibiotics, vaccines, or emergency use authorization (EUA) drugs that may be used during a scenario described in proposed §100.7. The department tracking of adverse reactions following such a scenario may take years, especially if a large number of individuals are affected. Five years is a minimal time in which to examine trends.

New §100.7(d) specifies the details of how this post-emergency transition period will work. Since the Texas Legislature did not define the various emergency terms used in SB 11, and did not include an explicit method for determining their duration, the proposed new subsection (d) states that: for types of emergencies where existing statutes provide for the duration, that will be the controlling trigger date; for types of emergencies where the law does not so provide, the department will determine the end date and post it on the department website. The department will use its expertise in public health and emergency management to make the latter determinations, and the website posting should be an effective method of getting this information disseminated. Once the time period referenced in subsection (d) has passed, consent is required under SB 11 and proposed new subsection (e) details the mechanics of that process. Proposed new subsection (f) pertains to department release of the information, and implements SB 11 changes to the Code, §161.00705(g).

New §100.8 implements changes to the Code, Chapter 161, amended by SB 11 regarding immunization information of first responders and their immediate families. SB 11 contains a second major expansion in the existing scope of the Registry. Under that legislation, first responders (and immediate family members, as defined, over 18) may request that a provider who administers an immunization to the person provide information regarding that immunization to the department for inclusion in the Registry, as described in proposed new rule subsection (a). Unlike the scenarios described in proposed new §100.7, the new legislation does not make this requirement mandatory. Rather, it is an available option for the persons covered. Proposed new subsection (b) requires the provider to submit that information, upon receiving such a request, as mandated by SB 11 through amendments to §161.00706(b) of the Code. The language in this subsection goes on to articulate deadlines and mechanics for how this works, including the logistics and methodologies for verification of the request for inclusion in the Registry. Proposed

new subsection (c) describes the logistics of making the request. Proposed subsection (d) covers the issue of medical verification regarding information submitted under this section, and lists documents that will be acceptable for that purpose. Proposed new subsection (e) details when the department can release such information, and this language tracks SB 11 amendments to §161.00706(d) of the Code. Proposed new subsection (f) details the ability of the person to have their information removed from the Registry, and this language tracks SB 11 amendments to §161.00706(e) of the Code.

New §100.9 provides the definition for an official immunization record, and is merely the language from existing §100.7 moved as part of the reorganization of this subchapter.

New §100.10 provides instructions for filing complaints about the Registry, and details the department's associated reporting requirements. This is the language from existing §100.8 moved as part of the reorganization of this subchapter, but with changes that: insert "alleged" in front of "failure to comply" to reflect that such a violation will not have been proven at that point of the process; improve readability; and include new reporting requirements associated with SB 11.

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications to state or local governments. The department or state costs associated with the Immunization Registry rule amendments required by Senate Bill 11 for IT programming, operational changes, and first responder education will be absorbed within available resources and new funding will not be requested. Also, Mr. Blass has determined that there would be some new burdens placed on certain health care providers by the regulations being proposed, given that SB 11 expands the scope of patients who will have health care information placed in the Registry and therefore inherently expands the types of providers who care for those patients. Some of these impacted providers may be small or micro-businesses (see the following small and micro-business impact analysis as follows).

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Once a provider is within the scope of proposed rules, then the rules provide for certain things that must be done such that the impacts are definite (e.g., provider must devote resources necessary to file reports). Since these impacts will happen, the department analysis under Economic Impact Statement of this preamble will also serve to satisfy the Small Business Impact Analysis required by Government Code, §2006.002(a).

The Economic Impact Statement of this preamble does not explicitly cover "micro-businesses," but Government Code, §2006.002(a), requires an analysis of the impacts on such businesses. The department believes that many of the health care providers impacted by the proposed rules will be "micro-businesses" as well as "small businesses," and thus the department's analyses regarding the latter will also be applicable to the former. While it is true that a micro-business may be inherently somewhat less able to absorb new regulatory burdens than a small business, the department believes that the reporting, etc. requirements in the proposed rules would be minimal enough to not place an undue burden on these "micro-business" providers.

There is no anticipated negative impact on local employment.

Government Code, Chapter 2006, was amended by the 80th Legislative Regular Session (House Bill 3430) to require that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency must first prepare an Economic Impact Statement and a Regulatory Flexibility Analysis.

The definition of a "small business" for purposes of this requirement was codified in Government Code, §2006.001(2). Under this definition, a "small business" is an entity that is: for profit, independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities or otherwise subject to control by other entities (and are not publicly traded).

Mr. Blass has determined that there may be an adverse economic effect on those small businesses directly regulated by the proposed rules. Therefore, the following two analyses have been performed:

ECONOMIC IMPACT STATEMENT

There are two major areas of possible impact regarding the proposed rules. The first area of impact is regarding the new system that would allow health care providers and birth registrars, if they chose, to affirm consent for persons online in the Registry. The second area of impact is regarding new reporting requirements mandated by SB 11 and implemented by this rulemaking package. This second area can be subdivided into two subsets. The first subset is health care providers who already report immunization information regarding children in Texas, but who would now have to also report data regarding any patients they have covered by proposed new rules §100.7 and §100.8. The second subset is healthcare providers who currently do not give immunizations to children, and thus do not report under existing rules, but who may give immunizations to adults under proposed new rules §100.7 and §100.8 and would thus be required to do certain Registry reporting as to patients covered under those rule sections.

The proposed changes to §100.4, pursuant to SB 11, would allow the department to implement a process for the health care providers in question to affirm consent for their patient's Registry participation if that affirmation has not already been done by another allowable person under the rule (birth registrars are discussed separately as follows). Current law requires all providers to report to the Registry immunizations administered to children under 18 years of age. The department is required to verify consent prior to inclusion of the information in the Registry. Currently, a significant number of providers fax or mail the completed consent forms to the department, and they are verified via a manual evaluation of each form by department staff. The proposed rules would allow the department to verify consent by providing a process for providers to affirm consent for their patients, and then to indicate that this has been done electronically in the Registry. This standardized affirmation process would allow for significantly quicker creation of new client records in the Registry, with concurrent faster realization of all the benefits that come with data inclusions in the Registry.

If a provider elects to use it, the new affirmation process would require that a provider site, if not already registered and reporting to the Registry, submit a registration application for Registry participation (access to the Registry has always required registration). The registration application is free of charge and can be completed and submitted by a provider or provider staff in

approximately 10 to 15 minutes. A provider site may include one or more physicians in that practice in its registration. A provider/provider site that is approved for Registry participation may access the Registry free of charge at any time. A computer with Internet access is required for access to the Registry, and basic computer skills are necessary. Actual economic cost will vary depending on the provider staff assigned to completion of the registration application (e.g., office manager, nurse, physician). However, the department believes that the current state of health care practice in Texas, given the complexities of various governmental and private insurance coverages, is such that the providers impacted by this proposed rule will already have the technological capability to facilitate Registry access and will possess (or have staff that possess) the requisite skills for registering for, and entering information into, the Registry (if they are not already doing so).

The new affirmation process would be necessary only for the addition of new clients who are not already enrolled in the Registry. The vast majority of newborns are currently enrolled in the Registry during the birth registration process. It is estimated that over 90% of Texas children under age 6 are currently enrolled in the Registry. The affirmation process, when necessary, will require approximately 7 to 12 minutes of provider staff time to perform a client search, print the Registry consent form for signature, get the form filled out and signed, and perform the online affirmation that a signed consent form has been obtained. Immediately after affirmation, the provider may enter immunization data into the Registry for that patient. Actual economic cost will vary depending on the provider staff resources to obtain and affirm consent and enter data into the Registry (e.g., nurse, office manager, medical records or clerical staff), but the additional burden should be minimal. Those providers who are currently mailing or faxing consent forms to the department should actually experience improved efficiency, given that currently the provider must wait until the department verifies consent before the provider can enter information into the Registry for that patient. Under the proposed rules, the provider could log on to the Registry, affirm consent, and immediately begin entering information on the immunizations the provider just administered.

The approximate number of small businesses (health care providers and provider sites) potentially impacted by the changes to §100.4 is 9,000 to 14,000 (including pediatricians, general practice physicians, family practice physicians and family medicine physicians).

Proposed changes to §100.4 would also allow the department to implement a process (similar to the one described previously) for a birth registrar to affirm consent for a newborn's Registry participation. Currently, a birth registrar in possession of a completed consent form for a newborn child faxes or mails the form to the department for verification of consent. The proposed rules would allow the department to verify consent by providing a process for a birth registrar to affirm electronically that consent has been obtained from the parent/managing conservator/legal guardian. The difference between this process and the one described previously for health care providers is that birth registrars would use the Texas Electronic Registrar system (an existing database which birth registrars use to enter vital statistic data) as a portal to affirm consent. This standardized affirmation process would allow for significantly quicker creation of new client records in the Registry, with concurrent faster realization of all the benefits that come with data inclusion in the Registry. Electronic integration of the Registry consent affirmation process with the Texas Electronic Registrar system would require a minor change in birthing center workflow but will not require additional time or staff resources, compared to the current process--birth registrars would be able to facilitate enrollment of a child into the Registry more quickly than is the case today with the registrar currently faxing or mailing consent forms to the department, given the inherent lag time for processing before the child is approved for Registry inclusion.

Changes to §100.7 require that health care providers report immunizations, antivirals, and other medications administered to individuals to prepare for, or in response to, a list of events related to disasters and emergencies. Because of the inherent time imperatives in the emergency/disaster-related scenarios covered in SB 11, the process for reporting to the Registry would require that a provider site, if not already registered and reporting to the Registry, submit a one-time registration application for Registry participation. The registration application is free of charge and can be completed and submitted by a provider or provider staff in approximately 10 to 15 minutes. Registration is required for each provider site (facility) that will report information to the Registry or access Registry data. A provider site may include one or more physicians in that practice in its registration. A provider/provider site that is approved for Registry participation may access the Registry free of charge at any time. A computer with Internet access is required for access to Registry data, and basic computer skills are necessary. Actual economic cost will vary depending on the provider staff assigned to completion of the registration application (e.g., office manager, nurse, physician). The department realizes that the new reporting requirements will fall on some providers who do not treat children and therefore have had no experience with the Registry. There will unavoidably be a higher learning curve for these provider sites than for those sites already working with the Registry. As a general matter, the department also realizes that there will be a small impact on all providers who must comply with the new reporting requirements required by SB 11 and reflected in the proposed rule. However, the department believes that the current state of health care practice in Texas, given the complexities of various governmental and private insurance coverages, is such that the providers impacted by this proposed rule will already have the technological capability to facilitate Registry access and will possess (or have staff that possess) the requisite skills for registering for, and entering information into, the Registry (if they are not already doing so). The infrequency of the disaster/emergency scenarios referenced in the rule should minimize the frequency of reporting that has to be done under proposed §100.7.

In the event of a disaster or emergency, a health care provider administering immunizations, antivirals, and/or other medications to individuals to prepare for, or in response to, the disaster/emergency scenario will be required to report information to the Registry. Reporting will be performed using Internet Registry access, as prescribed by the department. It is estimated that reporting of a patient's data elements to the Registry can be performed in approximately 2 to 4 minutes, including performing a client search and data entry of required information. SB 11 (and thus the proposed rule) does not require that consent be granted for data inclusion in the Registry until a certain time period, described in proposed §100.7(d), has passed. However, SB 11 provides that consent must be granted and verified for the information to remain in the Registry after that date. In the event that a patient wishes to grant consent for retention of data in the Registry, beyond the period described previously, the provider may print the Registry consent form for

the patient's completion and signature and then perform the online affirmation that proper consent has been obtained. At this point, the affirmation process is similar to that described for proposed §100.4 in this preamble, and the potential impacts should also be similar.

SB 11 states that the health care providers at issue here may report adverse reactions to the immunizations, antivirals, and other medications to the department, and the proposed rules reflect this language. Because the provider has a choice in whether to make such reports, and thus is completely in control of whether any economic impact associated with such reporting is incurred, the department does not analyze those possible impacts here.

The approximate number of small businesses (health care providers and provider sites) potentially impacted by the changes to §100.7 is 10,000 to 16,000 (including pediatricians, general practice physicians, family practice physicians, family medicine physicians and emergency medicine physicians). Impacts will be lesser, as discussed previously, for the subset of these providers who are already working with the Registry when one of these scenarios begins, as opposed to those who have no familiarity with it. Potential impact to these providers may vary depending on the nature, extent and duration of the disaster/emergency. Impacts to these providers may be minimized because the department expects that public health facilities (e.g., local health departments; department regional clinics) will play the initial and primary role in disaster/emergency response. A limited number of small business providers may become involved in initial disaster response activities, although they will likely perform a larger role in response activities if the event increases in severity or duration.

Proposed changes to §100.8, pursuant to SB 11 requirements, would require that health care providers report data elements regarding immunizations to the Registry at the request of a first responder or an immediate family member of a first responder (the first responder or immediate family member may elect to submit immunization information directly to the department for inclusion in the Registry). The process for provider reporting to the Registry requires that a provider site, if not already registered and reporting to the Registry, submit a one-time registration application for Registry participation. The registration application is free of charge and can be completed and submitted by a provider or provider staff in approximately 10 to 15 minutes. Registration is required for each provider site (facility) that will report information to the Registry or access Registry data. A provider site may include one or more physicians in that practice in its registration. A provider/provider site that is approved for Registry participation may access the Registry free of charge at any time. A computer with Internet access is required for access to Registry data, and basic computer skills are necessary. Actual economic cost will vary depending on the provider staff assigned to completion of the registration application (e.g., office manager, nurse, physician), and whether the provider site is already working with the Registry.

The department is required to verify the request from a first responder or immediate family member prior to inclusion of the client's information in the Registry. The proposed rules allow the department to verify the request for inclusion by providing an online process for a provider to electronically affirm that such a request has been received. This standardized affirmation process would allow for immediate creation of new client records in the Registry and will facilitate immediate reporting of immunizations by providers. The affirmation process, when necessary, will require approximately 2 to 5 minutes of provider staff time to enter client information into the Registry and perform the online affirmation that a request for inclusion has been obtained. Immediately after affirmation of the request, the provider may enter immunizations relating to first responders or immediate family members into the new client's record. It is estimated that the actual reporting of a client's data elements into the Registry can be performed in approximately 2 to 4 minutes. Actual economic cost will vary depending on the provider staff assigned to affirm the request for inclusion and enter data into the Registry (e.g., nurse, office manager, medical records or clerical staff). Some minor resource impact will be felt by these providers who must follow the new reporting requirements, with lesser impacts on those providers who are already working with the Registry (similar to the situation with impacts regarding proposed new §100.7). Presumably the type of patients described in proposed new §100.8 will make up a small percentage of a provider's over-all practice, which should function to minimize this reporting burden.

The approximate number of small businesses (health care providers and provider sites) potentially impacted by the changes to §100.8 is 7,000 to 10,000 (including general practice physicians, family practice physicians, family medicine physicians and emergency medicine physicians). The impact to these providers may be minimized because the proposed rules allow a first responder or immediate family member to submit immunization information directly to the department for inclusion in the Registry. The department is also evaluating a process that would allow a first responder or immediate family member to submit a request for Registry inclusion, as well as immunization information, through the department Health Service Region offices and through participating local health departments.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the 80th Legislative Regular Session, (House Bill 3430), 2007 to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rules are merely an implementation of legislative directives because of statutory changes, that proposed rule language becomes *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis. Of the two categories of potential impacts discussed herein, the first group (related to consent verification through an online system) only occur if the regulated party chooses to take upon himself the burden of helping the other person demonstrate consent to the agency. It is not a mandatory burden on the provider or birth registrar. Only the second major group of impacts is mandatory, and those are the reporting impacts. SB 11 mandates that providers report the listed data elements for those patients, and in those scenarios, described in proposed new rules §100.7 and §100.8.

PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years that the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections as proposed is to operate the program to ensure the safety of the public, and to clar-

ify processes. Inclusion of medical information in the Registry is inherently good for both the health of the individual patient and for public health in general. Individual patients are benefited by their health care providers having compiled and concise health care information readily available concerning that patient, so that health care can be delivered in an informed and proactive manner which avoids the negative health outcomes possible when providers do not have a full knowledge of what care other providers have given the patient. The Registry also facilitates vaccination reminder notifications, which should increase the number of persons who are properly immunized. Public health is benefited because better health care to individual patients reduces the chance of disease outbreaks in the public. The public at large is also benefited by improvements in efficiency in the delivery of health care. Such efficiencies should help to contain health care costs. Because the proposed rules bring more people within the scope of the Registry, there should be a commensurate expansion in the health (and other) benefits that the Registry provides. These benefits should be particularly significant regarding health care administered before, during and after public emergencies (see proposed new rule at §100.7), given the public health challenges inherent in such events.

Proposed rule changes designed to clarify processes regarding the Registry should make the rules more efficient and easier to understand, which should in turn increase the number of persons agreeing to submit information into the Registry.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Division of Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756, (512) 458-7111, extension 6658, or by e-mail to Victoria.Brice@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§100.1 - 100.10

STATUTORY AUTHORITY

The proposed amendments and new rules are authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease Act; and Chapter 161, concerning the Immunization Registry; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments and new rules affect Health and Safety Code, Chapters 81, 161, 826, and 1001; and Government Code, Chapter 531.

§100.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Child--The person or individual younger than 18 years of age to whom a vaccine has been administered.

(2) Consent--A statement signed by a parent, managing conservator, or legal guardian agreeing that the child's immunization history can be included in the registry and that the child's immunization record may be released from the registry.

(3) Data elements--The information:

(A) consistent with 42 U.S.C., §300aa-25, as amended, defined as the information a provider who administers a vaccine is required to record in a medical record, including:

(i) the date the vaccine is administered;

(ii) the type of vaccine administered, vaccine manufacturer and lot number;

(iii) the name, address, and if appropriate, the title of the provider administering the vaccine; and

(iv) any adverse or unexpected events for a vaccine; and

(B) relating to an immunization, antiviral, and/or other medication administered to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

~~[(3) Data elements--Consistent with 42 U.S.C. §300aa-25, as amended, data elements are defined as the information a provider who administers a vaccine is required to record in a medical record, including:]~~

~~[(A) the date the vaccine is administered;]~~

~~[(B) the type of vaccine administered, vaccine manufacturer and lot number; and]~~

~~[(C) the name, address, and, if appropriate, the title of the provider administering the vaccine.]~~

(4) Department--The Department of State Health Services [~~Texas Department of Health~~].

(5) Extraordinary Law Enforcement Emergency--Within the context of a public health emergency, a situation which requires

extra staffing, overtime and/or extra-jurisdictional law enforcement forces.

(6) First Responder--As defined by Government Code, §421.095.

(7) Hostile Military or Paramilitary Act--An attack or other use of force by an armed force of a nation or an organized unofficial group, against forces, property and/or infrastructure of the United States, state or local government.

(8) Immediate family member--The parent, spouse, child, or sibling of a person who resides in the same household as the person.

(9) [~~(5)~~] Immunization history--An accounting of all vaccines that a person [~~child~~] has received, or evidence of immunity, and other identifying information.

(10) [~~(6)~~] Immunization record--A record containing the name and date of birth of the person to whom a vaccine was administered; dates of vaccine administration; types of vaccine administered; and name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease.

(11) [~~(7)~~] Immunization registry--The database or single repository that contains immunization histories, which include necessary personal data for identification. This database is confidential, and access to content is limited to authorized users.

~~[(8) Parent--A parent, managing conservator, or legal guardian.]~~

(12) [~~(9)~~] Payor--An insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including the administration of vaccines to a person younger than 18 years of age.

(13) Potential disaster--An incident or event capable of causing widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action, or energy emergency.

(14) [~~(10)~~] Provider--Any physician, health care professional, or facility personnel duly licensed or authorized to administer vaccines.

(15) Public health emergency--An occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes, but is not limited to, an illness or health condition resulting from a natural disaster.

(16) Terrorist attack--An activity that is dangerous to human life and/or potentially destructive of critical infrastructure or key resources and is intended to intimidate or coerce the civilian population, or influence or affect the conduct of a government by mass destruction, assassination, and/or kidnapping.

(17) [~~(11)~~] User--An entity or individual authorized by the department to access immunization registry data.

(18) [~~(12)~~] Vaccine--Includes toxoids and other immunologic agents which are administered to a person [~~children~~] to elicit an immune response (immunization) and thus protect against infectious diseases.

§100.2. Confidentiality.

(a) Except as provided by Health and Safety Code, Chapter 161, Subchapter A, §161.00705, information [~~Information~~] that individually identifies a child or other individual, and is received by the department for the immunization registry, is confidential and may be used by the department for registry purposes only. Unless specifically authorized by Health and Safety Code, Chapter 161, Subchapter A, the department may not release registry information to any individual or entity without the written consent of the person or, if a minor, the parent, managing conservator, or legal guardian.

(b) A written confidentiality statement shall be signed by an authorized representative of the user. Any user of the registry shall protect the confidentiality of all immunization histories, records, and reports. Registry information may only be accessed by the limited persons, and used for the limited stated purposes, detailed at §100.5(e) of this title (relating to Receipt and Release of Registry Data). A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose individually identifiable information of a child or other individual to any individual or entity without the written consent of the individual [~~person~~] or, if a child [~~minor~~], the parent, managing conservator or legal guardian, or except as provided by the Occupations Code, Chapter 159, or the Insurance Code, Article 28B.04.

(c) Registry information is not subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, except as provided by Health and Safety Code, Chapter 161, Subchapter A. Registry information is not admissible in any civil, administrative, or criminal proceeding.

§100.3. Informing Parent, Managing Conservator, or Legal Guardian.

(a) A parent, managing conservator or legal guardian of a patient younger than 18 years of age shall be informed, via the methodology described at subsection (b) of this section, that the department has established and maintains an immunization registry for the primary purpose of establishing and maintaining a single repository of immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective childhood vaccine-preventable disease prevention and control efforts.

(b) The department shall provide written materials and forms to providers for the purpose of informing a parent, managing conservator or legal guardian about the immunization registry and specific information collected in that registry.

(c) The department and providers may use the registry to provide notices by mail, telephone, personal contact, or other means to a parent, managing conservator or legal guardian regarding his or her child who may be due or overdue for a particular vaccine according to the department's immunization schedule.

(d) The first time the department receives registry data, from a person other than the child's parent, managing conservator or legal guardian, for a child for whom the department has received consent to be included in the registry, the department shall send a written notice to the parent, managing conservator or legal guardian disclosing:

(1) that providers and payors may be sending the child's immunization information to the department;

(2) the information that is included in the registry;

(3) the persons to whom the information may be released;

(4) the purpose of the registry;

(5) the procedure to exclude a child from the registry; and

(6) the procedure to report an alleged [a] violation if a parent, managing conservator or legal guardian discovers a child is included in the registry after exclusion has been requested.

§100.4. Registry Consent and Withdrawal Relating to a Minor.

(a) A parent, managing conservator or legal guardian of a patient younger than 18 years of age may consent to the inclusion of the child's immunization history in the immunization registry by doing one of the following:

(1) indicating consent at birth certificate registration, including by electronic signature;

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services [Texas Department of Health], Immunization Branch [Division], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch [Division] at (800) 252-9152 to request a consent form; [or]

(3) completing written consent to be submitted to a heath care provider, birth registrar, regional health information exchange, or local immunization registry, who may review that consent and affirm that consent has been obtained via an affirmation process as directed by the department [by a provider or payor].

(b) Unless otherwise provided by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event), the department shall verify consent before including the reported information regarding the child in the immunization registry. Under Health and Safety Code, §161.007(a)(5), the department may elect to verify consent by receiving affirmation from a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained. The department shall provide notice to a provider that submits data elements for a person for whom consent cannot be verified. The notice shall contain instructions for obtaining and affirming consent and resubmitting the data elements to the department.

(c) [(b)] Consent is required to be obtained only one time, and is valid until the child becomes 18 years of age, unless the consent is withdrawn in writing.

(d) [(c)] A parent, managing conservator or legal guardian of a patient younger than 18 years of age may withdraw consent for the child to be included in the registry at any time by submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services [Texas Department of Health], Immunization Branch [Division], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch [Division] at (800) 252-9152 to request a consent withdrawal form. Unless otherwise provided by §100.7 of this title, the [The] department shall remove information from the immunization registry for any person for whom consent has been withdrawn, and the department shall send the parent, managing conservator or legal guardian a written confirmation of the removal of the information. The department may not retain individually identifiable information about any person for whom consent has been withdrawn except as provided for by §100.7 of this title.

(e) [(d)] A parent, managing conservator or legal guardian may request exclusion of a [the] child's immunization history from the immunization registry by doing one of the following:

(1) indicating the request for exclusion at birth certificate registration, including by electronic signature; or

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services [Texas Department of Health], Immunization Branch [Division], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch [Division] at (800) 252-9152 to request an exclusion form. Unless otherwise provided by §100.7 of this title, on [On] receipt of a written request to exclude a child's immunization records from the registry, the department shall send the parent, managing conservator or legal guardian a written confirmation of receipt of the request, and shall exclude the child's records from the registry. The department may not retain individually identifiable information about any person for whom an exclusion has been requested, unless otherwise allowed under §100.7 of this title.

§100.5. Receipt and Release of Registry Data.

(a) The immunization registry must contain information on the immunization history obtained by the department under this chapter regarding:

(1) a person who is younger than 18 years of age and for whom consent has been obtained;

(2) persons immunized to prepare for or in response to an event under §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event); and

(3) first responders and/or their immediate family members for whom a request has been submitted, as described at §100.8 of this title (relating to First Responder Immunization Information).

(b) [(a)] The department may obtain the data constituting an immunization record for a person [child] from a public health district, a local health department, the [child's] parent, managing conservator or legal guardian of a patient younger than 18 years of age, a physician [to the child], a payor, or from any health care provider licensed (or otherwise legally authorized) to administer vaccines. Submission of this information must be according to the procedures and in the format prescribed by the department.

(c) [(b)] Except as provided by §100.7 and §100.8 of this title [Effective January 1, 2005], the department shall verify consent before including information received under subsection (b) of this section [from a person other than the child's parent] in the immunization registry. The [Effective January 1, 2005, the] department may not retain individually identifiable information about a person for whom consent cannot be verified.

(d) When the department verifies consent under subsection (c) of this section, it may do so by any of the following, at its discretion:

(1) manual or electronic review of the consent form document signed (including by electronic signature) by a parent, managing conservator or legal guardian at birth certificate registration;

(2) manual or electronic review of a consent form signed by a parent, managing conservator or legal guardian and submitted to the department by mail to the Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756 (consent forms may also be received by facsimile);

(3) affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained, as described in Health and Safety Code, §161.007(a)(5), and in a manner prescribed by the department.

(e) [(c)] Except as limited by subsections (f) and (g) of this section, the [The] department may release the data constituting an im-

munization record: [for a child to any entity that is described by subsection (a) of this section to a school or child care facility in which the child is enrolled, or to a state agency having legal custody of the child.]

(1) to the parent, managing conservator, and/or legal guardian of a person younger than 18 years of age; and/or

(2) to the following entities, with those entities subject to the stated limitations:

(A) a Texas public health district or a Texas local health department, for public health purposes within their areas of jurisdiction;

(B) a physician or any health care provider licensed (or otherwise legally authorized) to administer vaccines in Texas, for treating the child as a patient;

(C) a Texas school or Texas child care facility, for a child enrolled in that school or child care facility;

(D) a payor currently authorized by the Texas Department of Insurance to operate in Texas, for immunization records related to the specific person in Texas covered under the payor's policy; and/or

(E) a state agency having legal custody of a child.

(3) Direct electronic access to the immunization registry information shall be limited to entities described in paragraph (2) of this subsection, for use under the stated limitations and subject to registration and access requirements as provided by the department.

(f) For persons immunized to prepare for, or in response to, an event covered by §100.7 of this title, the department may release information from the registry as provided in §100.7(f) of this title.

(g) For first responders and/or their immediate family members 18 years of age or older, the department may release information from the registry as provided in §100.8(e) of this title.

(h) [(d)] Health and Safety Code, §161.0105, provides limited liability protections, as described in those provisions. [A person, including a provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an immunization history or data from the department in compliance with this section is not liable for any civil damages.]

(i) [(e)] The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual [a child].

§100.6. Reporting to the Registry, and Medical Verification, relating to a Minor.

(a) Data elements regarding an immunization record provided to the department under this section, whether electronically or by other means, shall be submitted in a format and manner prescribed by the department.

(b) Except as otherwise provided by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event), [Effective January 1, 2005,] a health care provider who administers an immunization to a person younger than 18 years of age shall provide data elements regarding an immunization to the department within 30 days of administration of the vaccine. [Effective January 1, 2005, the department shall verify consent before including the reported information in the immunization registry, and the department may not retain individually identifiable information about a person for whom consent cannot be verified. For immunizations administered prior to January 1, 2005, providers shall provide an immunization history for persons for whom consent to participate in the registry has been obtained unless the immunization history is submitted to a payor.]

(c) A [Effective January 1, 2005, a] payor that receives data elements from a provider who administers an immunization to a person younger than 18 years of age shall provide the data elements to the department within 30 days of receipt of the data elements from a provider. [Effective January 1, 2005, the department shall verify consent before including the reported information in the immunization registry, and the department may not retain individually identifiable information about a person for whom consent cannot be verified. For immunizations administered prior to January 1, 2005, payors shall provide an immunization history for persons for whom consent to participate in the registry has been obtained.]

(d) A parent, managing conservator or legal guardian may provide evidence of a child's immunization history [, in a format provided by the department or one substantially similar,] directly to the department for inclusion in the registry. The department shall ensure that the immunization history submitted by a parent, managing conservator or legal guardian is medically verified immunization information by requiring the parent, managing conservator or legal guardian to submit evidence that includes a copy of one or more of the following:

(1) the child's medical record indicating the immunization history and including a provider's signature and the name and address of the provider;

(2) A vaccine-specific invoice from a health care provider for the immunization;

(3) vaccine-specific documentation showing that a claim for the immunization was paid by a payor;

(4) an immunization record signed by a school official; or

(5) an immunization history provided by a local or state immunization registry.

[(e) The department shall provide notice to a provider that submits an immunization history for a person for whom consent cannot be verified. The notice shall contain instructions for obtaining consent and resubmitting the immunization history to the department.]

(e) [(f)] A provider shall, upon request of the department, provide additional information to clarify data elements [an immunization history] submitted to the department.

(f) [(g)] The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process and expedite processing of provider applications.

§100.7. Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event.

(a) The immunization registry shall contain information regarding persons who receive an immunization, antiviral, and/or other medication administered:

(1) to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, and/or an extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title (relating to Definitions);

(2) in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action and/or extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title.

(b) A health care provider who administers an immunization, antiviral, and/or other medication as described in subsection (a) of this section shall provide the data elements to the department, within 30 days of that medical treatment, in a format and manner prescribed by the department.

(c) The department shall track, in the immunization registry, adverse reactions to an immunization, antiviral, and/or other medication administered as described in subsection (a) of this section. A health care provider who administers such an immunization, antiviral, and/or other medication may provide data related to adverse reactions to the department, in a format and manner prescribed by the department, for inclusion in the immunization registry. Department tracking will be based on the reports it receives under this subsection.

(d) Unless consent is obtained and verified, the individually identifiable information collected in the registry under this section shall only be retained in the registry for a period of 5 years following the end of the event as described in subsection (a) of this section. The end date of these occurrences shall be as specifically provided for by law. In the absence of law which specifically determines the end date, the department shall determine such an end date and post that date on its website.

(e) An individual or, if a child, the child's parent, managing conservator or legal guardian, may consent in writing to the continued inclusion of the person's information collected under this section in the registry past the retention time period specified in subsection (d) of this section by:

(1) mailing (or faxing) written notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a consent form may be obtained by calling the Immunization Branch at (800) 252-9152, or online at www.ImmTrac.com); or

(2) completing a consent form document, which must be verified by affirmation by a health care provider in a manner prescribed by the department.

(f) The department may release the information collected in the registry under this section with consent of the individual or, if a child, the child's parent, managing conservator or legal guardian, or to a state agency or health care provider for:

(1) the purposes outlined in Health and Safety Code, Chapter 161, Subsection A; and/or

(2) the purpose of aiding and coordinating communicable disease prevention and control efforts during an event as described in subsection (a) of this section.

§100.8. First Responder Immunization Information.

(a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may request that a health care provider who administers an immunization to the person provide the data elements regarding the immunization to the department for inclusion in the registry.

(b) A health care provider, on receipt of a request under subsection (a) of this section, shall submit the data elements to the department within 30 days of administration of the vaccine in a format and manner prescribed by the department. The department shall verify the request before including the information in the registry. The department may elect to verify the request for inclusion in the registry by obtaining an affirmation from the health care provider that a request has been received.

(c) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may request inclusion of that person's immunization history in the registry by:

(1) mailing written notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a request form may be obtained by calling the Immunization Branch at (800) 252-9152, or online at www.ImmTrac.com); or

(2) completing a written request to the person's health care provider, to be verified by affirmation (in a manner prescribed by the department) by the health care provider that such a request has been received.

(d) The department shall ensure that the immunization history submitted by the individual under subsection (c)(1) of this section is medically verified immunization information by requiring the individual to submit evidence that includes a true and accurate copy of one or more of the following:

(1) the individual's medical record indicating the immunization history and including a provider's signature and the name and address of the provider;

(2) a vaccine-specific invoice from a health care provider for the immunization;

(3) vaccine-specific documentation showing that a claim for the immunization was paid by a payor;

(4) an immunization record signed by a school official; or

(5) an immunization history provided by a local or state immunization registry.

(e) The department may release the information collected in the registry under this section with consent of the individual or to any health care provider licensed or otherwise authorized to administer vaccines.

(f) A person whose immunization records are included in the registry under this section may request in writing that the department remove the information from the registry. The department shall remove the person's immunization records from the registry not later than the 10th day after receiving a request.

§100.9. Official Immunization Record.

An immunization record obtained from the immunization registry shall be accepted as an official immunization record of the individual.

§100.10. Complaints.

(a) A person may file a complaint with the department related to the department's alleged failure to comply with a request for exclusion of an individual from the registry by mailing such a complaint to: Manager, Immunization Branch, Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Branch at feedback.ImmDirector@dshs.state.tx.us. The department shall respond to the written complaint within 30 days of that receipt of that complaint.

(b) A person may report an incident of discrimination for requesting exclusion of an individual from the registry, or for using an exemption for a required immunization, by mailing written notification to: Manager, Immunization Branch, Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Branch at feedback.ImmDirector@dshs.state.tx.us. The department shall respond to the written notification within 30 days of receipt of that notification.

(c) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the House of Representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year. The report shall:

(1) include the number of complaints received by the department related to the department's alleged failure to comply with requests for exclusion of individuals from the registry;

(2) identify all reported incidents of discrimination for requesting exclusion of individuals from the registry or for using an exemption for a required immunization;

(3) include the number of complaints received by the department related to the department's alleged failure to remove information from the registry as required by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event) after an event described in that section; and

(4) include the number of complaints received by the department related to the department's alleged failure to comply with written requests for the removal of information relating to first responders and their immediate family under §100.8 of this title (relating to First Responder Immunization Information).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801365
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 458-7111 x6972

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25 TAC §100.7, §100.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease Act; and Chapter 161, concerning the Immunization Registry; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Health and Safety Code, Chapters 81, 161, 826, and 1001; and Government Code, Chapter 531.

§100.7. Official Immunization Record.

§100.8. Complaints.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801366
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the amendment of §289.204, concerning fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services, the amendment of §289.226, concerning registration of radiation machine use and services, the amendment of §289.232, concerning radiation control regulations for dental radiation machines, the amendment of §289.233, concerning radiation control regulations for radiation machines used in veterinary medicine, and amendment of §289.301, concerning registration and radiation safety requirements for lasers and intense-pulsed light devices.

BACKGROUND AND PURPOSE

The amendment of §289.204 is necessary to clarify that although House Bill (HB) 2285 (80th Legislature, 2007) amending Health and Safety Code, §12.0112(b)(2), removed the two-year term for radiation permits, the fees will continue to be paid every two years. As a result of Senate Bill (SB) 1604 (80th Legislature, 2007) amending Health and Safety Code, §401.011, the section is revised to delete the applicable fees, definition, rule requirements, and rule citations related to the licensing and inspection of low-level waste processing and uranium recovery and disposal since the regulatory authority for these items has been transferred from the department to the Texas Commission on Environmental Quality (TCEQ). In addition, the fee amounts for the industrial radiographer certification and examinations that were previously revised in §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography) in 2007, are being updated in this revised section to be consistent with §289.255 of this title. As a result of HB 2285 amending Health and Safety Code, §401.301(f), the department is prohibited from assessing fees on local law enforcement agencies for the registration of x-ray machines used for security screening therefore resulting in a loss of revenue to the state. The department has determined that it is able to absorb the lost revenues and will not attempt to recoup the loss by increasing fees for the remaining industrial x-ray machine registrants. Other minor grammatical changes are also made.

Section 289.226 is being amended as a result of HB 2285 remove the administrative review and two-year term requirements of radiation permits and, therefore, reinstate the previous requirements for renewal of certificates of registration for radiation machines. In addition, the section is revised to update the names of several Texas medical and professional boards, update the

titles of a few referenced sections, and correct referenced citations. Other minor grammatical changes are also made.

Due to HB 2285, the amendment of §289.232 is necessary to remove the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for radiation machines used in dentistry. This revised section also updates the department name and the names of several Texas medical and professional boards and corrects referenced citations. Several definitions, requirements concerning enforcement and hearings procedures, and a form are also revised to be consistent with language used throughout this chapter. Additionally, the fee amounts for certificates of registration for radiation machines used in dentistry that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. The table concerning the half-value layer for selected kilovolt peaks is revised to state the correct values, and other minor grammatical corrections are also made.

Due to HB 2285, §289.233 is revised to remove the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for radiation machines used in veterinary medicine. Section 289.233 updates the department name and the names of several Texas medical and professional boards, clarifies a couple of radiation machine requirements, and corrects referenced citations. Several definitions, requirements concerning enforcement and hearings procedures, and a form are also revised to be consistent with language used throughout this chapter. Additionally, the fee amounts for certificates of registration for radiation machines used in veterinary medicine that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Other minor grammatical changes are also made.

The amendment of §289.301 is necessary to remove the administrative review and two-year term requirements of radiation permits and, therefore, reinstate the previous requirements for renewal of certificates of registration for laser machines, due to HB 2285. Section 289.301 is also revised to update the names of several Texas medical and professional boards, clarify requirements for protection against Class 3b or 4 lasers and intense-pulsed light device radiation, and correct reference citations and a few minor grammatical inconsistencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.204, 289.226, 289.232, 289.233, and 289.301 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

Due to SB 1604 amending Health and Safety Code, §401.011, the regulatory authority for the applicable licensing and inspection of low-level waste processing and uranium recovery and disposal responsibilities have been transferred from the department to the TCEQ and, therefore, the following changes have been made: §289.204(b)(1)(A) deletes reference to §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); the definition of "post closure" in §289.204(c)(6) is deleted; §289.204(d)(1) and (2) deletes reference to "subsection (m)"; and current §289.204(m) regarding the schedule of fees for uranium recovery and byproduct material disposal facility licenses, §289.204(n) regarding adjustments to fees for uranium recovery and byproduct material disposal facility licenses, and §289.204(o) regarding one-time fee adjustments for uranium recovery and byproduct material disposal facility licenses are deleted, therefore renumbering the subsequent subsection.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: Section 289.204(d)(2) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the license or general license acknowledgement and shall be paid in full on or before the last day of the expiration month;" in §289.204(d)(3), the second and third sentences are revised to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month;" and §289.204(l)(2) is changed to read "In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in §289.205 of this title (relating to Hearing and Enforcement Procedures)."

In §289.204(h)(2) relating to fees for accreditation of mammography facilities, current subparagraph (G) is deleted because the department no longer incurs a cost for replacement of thermoluminescent dosimeters. Subsequent subparagraphs are renumbered.

In §289.204(i), the fee amounts for the industrial radiographer certification and examinations that were previously revised in §289.255 of this title in 2007, are being updated in this revised section to be consistent with §289.255 of this title. In §289.204(j), the sentence "As of the effective date of this section, the fees for the dental radiographic only category and the veterinary category, as specified in the following schedule, are the applicable fees for those categories." is deleted because the fees addressed in this sentence are now included specifically in §289.232 and §289.233.

In §289.226(b)(3) and (5), the titles of several referenced sections are updated to state the correct titles. The following subsections are revised to update the names of several Texas medical and professional boards: §289.226(b)(11), (f)(7), and (t)(1)(B)(i)(II)(-g-)(-1-) and (-3-). Section 289.226(i)(4) updates the rule citation to be consistent with the recently revised §289.255 of this title. The words "that results in a change in inventory as specified in subsection (m)(1)(C) of this section" are added to §289.226(n)(2) to clarify the notification requirements to the department for persons who sell, lease, lend, dispose, assemble, install, or otherwise transfer radiation machines in the state.

Due to HB 2285, §289.226(o) and (q) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and, therefore, reinstate the previous requirements for renewal of certificates of registration for radiation machines.

Section 289.232(b)(3) changes the referenced rule citations to state the correct citations. The following subsections and definitions are revised and/or deleted to change the

department name from "Texas Department of Health" to "Department of State Health Services", and/or to change the Radiation Control Program name from "Bureau of Radiation Control" to "Radiation Control" as a result of the 2004 department and Radiation Control Program name changes and reorganization: §289.232(c)(7); current (c)(15); new (c)(19) and (27); §289.232(e)(1); §289.232(g)(1)(D); figure for §289.232(i)(5)(B)(iii); figure for §289.232(j)(1)(L)(i)(II); and subsequent definitions are renumbered. In addition, the following subsections of the section are deleted and/or changed to be consistent with language used in other sections of this chapter: current §289.232(c)(31); new §289.232(c)(48); renumbered §289.232(c)(71); language and figure for §289.232(i)(5)(B)(iii); §289.232(j)(2)(C)(iii); §289.232(k)(2)(C)(i), (v), and (vi); §289.232(k)(2)(D)(iii)(III) and (IV); §289.232(k)(2)(E)(ii)(I)(-d-) and (-f-); §289.232(k)(2)(E)(ii)(II)(-a-) through (-c-); and §289.232(k)(2)(G)(iv).

In §289.232(g)(1)(A) - (C), the fee amounts for certificates of registration for radiation machines used in dentistry that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Section 289.232(g)(1)(B)(ii) and (1)(C), (h)(1)(D), and (i)(6)(L) update the referenced citations to state the correct citations.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: §289.232(g)(1)(B) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month" and §289.232(g)(2)(B) is changed to read "In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2)(C) of this section."

Due to HB 2285, §289.232(h)(6) and new (8) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for radiation machines used in dentistry. Subsequent paragraphs are renumbered.

Current §289.232(i)(5)(C) is deleted as this information is redundant with language in §289.232(i)(5)(B)(iii) of the section. Subsequent subparagraphs are renumbered. The table for §289.232(i)(6)(E)(i)(I) concerning the half-value layer for selected kilovolt peaks is revised to state the correct values. Additionally, §289.232(i)(6)(I) deletes the word "interval" and replaces it with "output" before "reproducibility" to be technically correct. Section 289.232(j)(2)(C)(i)(II)(-e-) adds the words "certificate of" before the word "registration" to be consistent with language used throughout this section.

Section 289.233(c) adds language to be consistent with other sections of this chapter. The following subsections and definitions are revised and/or deleted to change the department name from "Texas Department of Health" to "Department of State Health Services" and/or to change the Radiation Control Program name from "Bureau of Radiation Control" to "Radiation Control" as a result of the 2004 department and Radiation Control Program name changes and reorganization: §289.233(c)(7); current (c)(17); new (c)(20); §289.233(e)(1); §289.233(g)(1)(D); figure for §289.233(i)(3)(F)(vii); figure for §289.233(i)(4)(B)(iii); figure for §289.233(j)(1)(K)(i)(II); and subsequent definitions are renumbered. In addition, the following subsections are deleted and/or changed to be consistent with language used in other sections of this chapter: current §289.233(c)(34); new §289.233(c)(52); renumbered §289.233(c)(68); §289.233(g)(1)(A); language and figure for §289.233((i)(4)(B)(iii); §289.233(j)(3)(C)(iii); §289.233(k)(2)(C)(i), (v), (vi), and (vii); §289.233(k)(2)(D)(iii)(III) and (IV); §289.233(k)(2)(E)(ii)(I)(-d-) and (-f-); and §289.233(k)(2)(E)(ii)(II)(-a-) through (-c-).

In §289.233(g)(1)(A) through (C), the fee amounts for certificates of registration for radiation machines used in veterinary medicine that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Section §289.233(g)(1)(C) updates the referenced citation to state the correct citations.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: §289.233(g)(1)(B) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month", and §289.233(g)(2)(B) is changed to read "In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2) of this section."

Due to HB 2285, §289.233(h)(6) and new (8) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for radiation machines used in veterinary medicine. Subsequent paragraphs are renumbered.

Section §289.233(i)(5)(H)(iv)(II) deletes the words "for circular image receptors" after the words "image receptor" to be technically correct. Language is added as new §289.233(i)(5)(N)(v) to clarify that fluoroscopic x-ray systems shall comply with the additional requirements stated in §289.233(i)(6). Section 289.233(j)(3)(C)(i)(II)(-e-) adds the words "certificate of" before the word "registration" to be consistent with language used throughout this section.

In §289.301(a)(2) the word "laser" is replaced with the word "lasers" to be grammatically correct. The definition for "continuous wave" in §289.301(d)(14) replaces ">=" with "=" to correctly represent the mathematical symbol. The definition for §289.301(d)(36) updates the names of two Texas medical and professional boards. Section 289.301(j)(3) adds "Class 3B and 4" before the word "lasers" to clarify the type of lasers in their possession that should be inventoried. Section 289.301(j)(3)(E) and (4)(B) replaces "in accordance with subsection (d)(35)" with "as defined in subsection (d)(38)" to be grammatically correct and to state the correct rule citation.

Due to HB 2285, §289.301(k) and (m) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for laser machines.

Section 289.301(r)(2) adds the words "presently being used or listed on the registrant's current inventory," before the words "shall be provided" to clarify which lasers the registrant needs to provide written instructions for safe use. The sentence "The instructions to personnel shall be maintained in accordance with subsection (ee) of this section for inspection by the agency." is added at the end of this paragraph to direct the registrant to maintain records of the written instructions for safe use for inspection by the agency.

Section 289.301(t)(1)(E) and (w) add language to inform the registrant of where in the section recordkeeping intervals are listed for the maintenance of records required in this section. Section 289.301(x) adds language to clarify that the registrant shall maintain current records/documents required by this subsection for inspection by the agency. In addition, the figure for §289.301(ee) is revised to add language to clarify which lasers the registrant needs to provide written instructions for safe use.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that §289.226, §289.232, §289.233, and §289.301 are in effect, there will be no fiscal implications to the state or local government as a result of enforcing and administering the sections as proposed. However, concerning §289.204, Ms. Tennyson has determined that there will be fiscal implications to state government which will be a decrease in revenue to the state of $11,691 for calendar years 2008, 2010, and 2012 and a decrease in revenue to the state of $3,486 for calendar years 2009 and 2011, due to the department being prohibited from assessing fees on local law enforcement agencies for the registration of x-ray machines used for security screening, as a result of HB 2285 amending Health and Safety Code, §401.301(f). The department has determined that it is able to absorb the lost revenues and will not attempt to recoup the loss by increasing fees for the remaining industrial x-ray machine registrants. Implementation of proposed §289.204 will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

STATEMENT OF NO ADVERSE ECONOMIC IMPACT

Pursuant to the requirement of §2006.002(c) of the Government Code (amended by HB 3430, 80th Legislature), the department has determined that none of the proposed changes "may have an adverse economic effect on small businesses subject to the proposed rule." This determination is made because there will be no adverse economic impact to any regulated entity subject to the proposed rule as further discussed in the Small and Micro-Business Economic Impact Analysis above.

PUBLIC BENEFIT

Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering §289.204, §289.226, §289.232, §289.233, and §289.301 is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department is able to properly enforce the state's radiation protection rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Division for Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or Cindy.Cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER D. GENERAL

25 TAC §289.204

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive

Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendment affects the Health and Safety Code, Chapters 12, 401, and 1001; and Government Code, Chapters 531 and 2001.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) (No change.)

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

(A) a radioactive material license issued in accordance with §289.252 of this title (relating to Licensing of Radioactive Material), [~~§289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities),~~] or §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM))[~~, or §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities)~~]; or

(B) - (C) (No change.)

(2) - (3) (No change.)

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

[~~(6) Post-closure--The time period after which closure activities have been completed by the conventional mill licensee and prior to transfer of land ownership of tailings disposal sites to the State of Texas or the United States of America and termination of the license or after which confirmatory surveys have been conducted by the agency of an in-situ facility and before termination of the license or site.~~]

(6) [~~(7)~~] Processor of radioactive material [~~Radioactive Material~~]--A manufacturer/distributor who converts normal form radioactive material into special form or a manufacturer/distributor of radioactive sealed sources.

(d) Payment of fees.

(1) Each application for a specific license, general license acknowledgement, or certificate of registration for which a fee is prescribed in subsections (e), (g), or (j)[~~, or (m)~~] of this section shall be accompanied by a nonrefundable fee equal to the appropriate fee. Each request for evaluation of a sealed source and/or device shall be accompanied by a nonrefundable fee prescribed in subsection (f) of this section. Each application for accreditation of a mammography facility shall be accompanied by a nonrefundable fee prescribed in subsection (h) of this section. Each application for an industrial radiographer certification and an industrial radiographer examination shall be accompanied by a nonrefundable and non-transferable fee prescribed in subsection (i) of this section.

(A) - (C) (No change.)

(2) A nonrefundable fee, in accordance with subsection (e) [~~and (m)~~] of this section shall be paid for each radioactive material license and/or for each general license acknowledgement. The fee shall be paid every two years based on the month listed as the expiration month on [~~for the two-year term of~~] the license or general license acknowledgement and [~~. The fee~~] shall be paid in full on or before the last day of the expiration month [~~and year of the license or general license acknowledgement~~]. In the case of a single license that authorizes more than one category of use, the fee shall be the prescribed fee for the highest license category plus 25% of the applicable prescribed fee for each additional license category authorized.

(3) A nonrefundable fee, in accordance with subsection (j) of this section, shall be paid for each certificate of registration for radiation machines and/or services, or sources of laser radiation. The fee shall be paid every two years based on the month listed as the expiration month on [~~for the two-year term of~~] the certificate of registration and [~~. The fee~~] shall be paid in full on or before the last day of the expiration month [~~and year of the certificate of registration~~].

(4) - (9) (No change.)

(e) - (g) (No change.)

(h) Fees for accreditation of mammography facilities.

(1) (No change.)

(2) Fees for accreditation of mammography facilities are as follows.

(A) - (F) (No change.)

[~~(G) The fee for replacement of thermoluminescent dosimeters (TLD) is $75.~~]

(G) [~~(H)~~] Each facility for which a targeted clinical image review is required will be charged for actual expenses to the agency arising from the visit.

(H) [~~(I)~~] Each facility for which an on-site visit due to three denials of accreditation is required will be charged for actual expenses to the agency arising from such visit.

(I) [~~(J)~~] Payment of the fees in subparagraphs (G) and (H) [~~(H) and (I)~~] of this paragraph shall be made within 60 days following the date of invoice.

(i) Fees for industrial radiographer certification and for radiographer certification examinations.

(1) The nonrefundable and non-transferable application fee for examination shall be $120 [~~$25~~] and shall be submitted to the agency with the application for examination.

(2) The nonrefundable application fee for radiographer certification shall be $110 [~~$100~~] and shall be submitted to the agency with the application for radiographer certification.

(j) Schedule of fees for certificates of registration for radiation machines, lasers, and services. The following schedule contains the fees for certificates of registration for radiation machines, lasers, and services. [~~As of the effective date of this section, the fees for the dental radiographic only category and the veterinary category, as specified in the following schedule, are the applicable fees for those categories.~~]
Figure: 25 TAC §289.204(j) (No change.)

(k) (No change.)

(l) Failure to pay prescribed fees.

(1) (No change.)

(2) In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, [~~the license or certificate of registration expires and~~] the agency may implement compliance procedures as provided in §289.205 of this title (relating to Hearing and Enforcement Procedures).

(3) (No change.)

[(m) Schedule of fees for uranium recovery and byproduct material disposal facility licenses. The following schedule contains the fees for uranium recovery and byproduct material disposal facility licenses:]

[Figure: 25 TAC §289.204(m)]

[(n) Adjustments to fees for uranium recovery and byproduct material disposal facility licenses.]

[(1) If additional noncontiguous uranium recovery facility sites are authorized under the same license, the appropriate fee shall be increased by 25% for each additional site for an operational year and 50% for closure only.]

[(2) If an authorization for disposal of byproduct material is added to a license, the appropriate fee shall be increased by 25%.]

[(o) One-time fee adjustments for uranium recovery and byproduct material disposal facility licenses. For the addition of the following items after an environmental assessment has been completed on a facility, a one-time fee corresponding to the item shall be paid:]

[(1) $28,658 for in situ wellfield on noncontiguous property;]

[(2) $71,651 for in situ satellite;]

[(3) $11,235 for wellfield on contiguous property;]

[(4) $50,756 for non-vacuum dryer; or]

[(5) $71,651 for disposal (including processing, if applicable) of byproduct material.]

(m) [(p)] Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801331
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §§289.226, 289.232, 289.233

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 12, 401, and 1001; and Government Code, Chapters 531 and 2001.

§289.226. Registration of Radiation Machine Use and Services.

(a) (No change.)

(b) Scope.

(1) - (2) (No change.)

(3) Registrants using analytical and other industrial radiation machines, such as x-ray equipment used for cathodoluminescence, ion implantation, gauging, or electron beam welding, are subject to the requirements of §289.228 of this title (relating to Radiation Safety Requirements for [Analytical and Other] Industrial Radiation Machines).

(4) (No change.)

(5) Registrants using mammography radiation machines are also subject to the requirements of §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography) and §289.234 of this title (relating to Mammography Accreditation) [Accreditation of Mammography Facilities)].

(6) - (10) (No change.)

(11) For purposes of this section, a practitioner of the healing arts is a person licensed to practice healing arts by either the Texas Medical Board [Texas State Board of Medical Examiners] as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatric Medicine [Texas State Board of Podiatry Examiners].

(c) - (e) (No change.)

(f) Application for registration for human use of radiation machines. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) - (6) (No change.)

(7) An application for accelerators or therapeutic radiation machines for human use shall be signed by a practitioner licensed by the Texas Medical Board [Texas State Board of Medical Examiners]. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility has more than one licensed practitioner who may direct the operation of radiation machines. The application shall also be signed by the RSO if the RSO is someone other than the licensed practitioner. Each applicant shall submit operating and safety procedures as described in §289.229(h)(1)(D) of this title and a description of the proposed facilities in accordance with the following:

(A) - (B) (No change.)

(g) (No change.)

(h) Application for registration of healing arts screening and medical research.

(1) (No change.)

(2) In addition to the requirements of subsections (e) and (f) of this section, any research using radiation machines on humans shall be approved by an Institutional Review Board (IRB) as required by Title 45, Code of Federal Regulations (CFR) [~~CFR~~], Part 46 and Title 21, CFR, Part 56. The IRB shall include at least one practitioner of the healing arts to direct any use of radiation in accordance with §289.231(b)(1) of this title.

(i) Application for registration of radiation machines for non-human use, including use in morgues. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) - (3) (No change.)

(4) Each applicant for use of radiation machines in industrial radiographic operations shall submit the information required in §289.255(t)(1) [~~§289.255(u)(7)~~] of this title before beginning use of the machine(s).

(5) (No change.)

(j) Application for registration of radiation machine services. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) Each person who intends to provide radiation services described in subsection [~~subsections~~] (b)(10) of this section shall apply for and receive a certificate of registration from the agency before providing such service.

(2) - (8) (No change.)

(k) - (m) (No change.)

(n) Sale, lease, loan, installation, assembly, disposal, and transfer of radiation machines.

(1) (No change.)

(2) Any person who sells, leases, lends, disposes, assembles, installs, or otherwise transfers radiation machines in the state that results in a change in inventory as specified in subsection (m)(1)(C) of this section shall notify the agency of the following information within 30 days of such action:

(A) - (C) (No change.)

(3) (No change.)

(o) Expiration of certificates of registration [~~and administrative renewal~~].

(1) [~~Effective September 1, 2004, the term of the certificate of registration is two years.~~] Except as provided by subsection (q) of this section, each certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration. [~~Except for subsection (q)(5) of this section, upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with subsection (l)(4) of this section, the certificate of registration will be administratively renewed. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.~~]

[~~(2) If the fee is not paid and the certificate of registration is not renewed in accordance with paragraph (1) of this subsection, the certificate of registration expires, and the registrant is in violation of the requirements in this chapter and is subject to administrative penalties in accordance with §289.205 of this title.~~]

[~~(A) If the registrant pays the fee required by §289.204 of this title within 30 days after expiration of the certificate of registration, the certificate of registration will be reinstated and the registrant will not be required to file an application in accordance with subsection (e) of this section.~~]

[~~(B) If the registrant fails to pay the fee within 30 days after expiration of the certificate of registration, the registrant shall file an application in accordance with subsection (e) of this section.~~]

(2) [~~(3)~~] If a registrant does not submit an application for renewal of [~~fails to pay the fee required by §289.204 of this title and~~] the certificate of registration in accordance with subsection (q) of this section, as applicable [~~is not renewed~~], the registrant shall on or before the expiration date specified in the certificate of registration:

(A) terminate use of all radiation machines and/or terminate radiation machine servicing or radiation services; [~~and~~]

(B) submit to the agency a record of the disposition of the radiation machines, if applicable, and if transferred, to whom it was transferred, within 30 days following the expiration date; and [~~.~~]

(C) pay any outstanding fees in accordance with §289.204 of this title.

(3) [~~(4)~~] Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(p) (No change.)

(q) Renewal [~~Technical renewal~~] of certificate of registration.

(1) An [~~If required by the certificate of registration, an~~] application for [~~technical~~] renewal of a certificate of registration shall be filed in accordance with subsection (e) of this section and applicable paragraphs of subsections (f) - (j) of this section. [~~An application for a technical renewal of a certificate of registration shall be submitted to the agency by the date specified in the certificate of registration. If the registrant fails to apply and pay the fee required by §289.204 of this title, or the agency does not approve the application in accordance with subsection (k)(1) of this section, the certificate of registration expires and the registrant is in violation of the requirements in this chapter and is subject to administrative penalties in accordance with §289.205 of this title. The registrant shall comply with the requirements of subsection (o)(3)(A) - (B) of this section.~~]

[~~(2) Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.~~]

(2) [~~(3)~~] If a registrant files an application for a [~~technical~~] renewal in proper form before the existing certificate of registration expires [~~and pays the fee required by §289.204 of this title~~], such existing certificate of registration shall not expire until the application status has been determined by the agency.

[~~(4) An application for technical renewal of a certificate of registration will be approved if the agency determines that the requirements of subsection (e) of this section and applicable paragraphs of subsections (f) - (j) of this section have been satisfied.~~]

[~~(5) When the date for administrative renewal in accordance with subsection (o)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the certificate of registration will be renewed if the fee required by §289.204 of this title is paid, the technical renewal is approved by the agency in accordance with paragraph (4) of this subsection, and the agency does not deny the renewal in accordance with subsection (l)(4) of this section.~~]

[~~(6) When the date for the administrative renewal in accordance with subsection (o)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur~~

~~at the same time, the certificate of registration renewal may be denied by the agency if any one of the following conditions apply:~~]

[~~(A) the fee required by §289.204 of this title is not paid;~~]

[~~(B) the agency denies the renewal in accordance with subsection (l)(4) of this section; or~~]

[~~(C) the agency does not approve the technical renewal in accordance with paragraph (4) of this subsection.~~]

[~~(7) The requirements in this subsection are subject to the provisions of Government Code, §2001.054.~~]

(r) - (s) (No change.)

(t) Appendices.

(1) Requirements for RSOs for registrants.

(A) (No change.)

(B) Specific requirements for RSOs by facility are as follows.

(i) Healing arts facilities shall have:

(I) (No change.)

(II) non-practitioner RSOs with the following:

(-a-) - (-f-) (No change.)

(-g-) evidence of:

(-1-) registration with the Texas Medical Board [~~Texas State Board of Medical Examiners~~] performing radiologic procedures under a physician's instruction and direction;

(-2-) (No change.)

(-3-) registration with the Texas State Board of Podiatric Medicine [~~Texas State Board of Podiatry Examiners~~] performing radiologic procedures under a podiatrist's instruction and direction; and

(-4-) (No change.)

(-h-) - (-j-) (No change.)

(ii) - *(iii)* (No change.)

(C) (No change.)

(2) - (4) (No change.)

§289.232. Radiation Control Regulations for Dental Radiation Machines.

(a) (No change.)

(b) Scope.

(1) - (2) (No change.)

(3) Dental radiation machines located in a facility that also has other healing arts radiation machines will be inspected at the intervals specified in §289.231(ll)(2) [~~§289.231(ll)(1)~~] of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation) and equipment performance evaluations shall be performed at the interval specified for a medical facility in [~~subsection~~] §289.227(o)(1) [~~§289.227(q)(1)~~] of this title (relating to Use of Radiation Machines in the Healing Arts [~~and Veterinary Medicine~~]).

(4) - (5) (No change.)

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Agency--The Department of State Health Services [~~Texas Department of Health~~] or its successor.

(8) - (14) (No change.)

[~~(15) Board--The Texas Board of Health or its successor.~~]

(15) [~~(16)~~] Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Texas Radiation Control Act and this section.

(16) [~~(17)~~] Certified equipment--Equipment that has been certified in accordance with Title 21, Code of Federal Regulations.

(17) [~~(18)~~] Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

Figure: 25 TAC §289.232(c)(17)

[~~Figure: 25 TAC §289.232(c)(18)~~]

(18) [~~(19)~~] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(19) Commissioner--The Commissioner of the Department of State Health Services.

(20) - (26) (No change.)

(27) Director--The director of the radiation control program under the agency's jurisdiction.

(28) [~~(27)~~] Dose--For external exposure to x-ray radiation from radiation machines, a generic term that means absorbed dose, dose equivalent, or total effective dose equivalent. For purposes of this section, "radiation dose" is an equivalent term.

(29) [~~(28)~~] Dose equivalent--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(30) [~~(29)~~] Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(31) [~~(30)~~] Embryo/fetus--The developing human organism from conception until the time of birth.

[~~(31) Enforcement conference--A meeting held by the agency with a person to discuss the following:~~]

[~~(A) safety, safeguards, or environmental problems;~~]

[~~(B) compliance with regulatory or registration condition requirements;~~]

[~~(C) proposed corrective measures including, but not limited to, schedules for implementation; and~~]

[~~(D) enforcement options available to the agency.~~]

(32) - (47) (No change.)

(48) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(49) [~~(48)~~] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act and agency rules, orders, requirements, and conditions of the certificate of registration.

(50) [~~(49)~~] Institutional Review Board--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(51) [~~(50)~~] Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(52) [~~(51)~~] kV--Kilovolt.

(53) [~~(52)~~] kVp--Kilovolt peak (See definition for peak tube potential).

(54) [~~(53)~~] kWs--Kilowatt-second. It is equivalent to 10 E 3 watt-second, where 1 watt-second = 1 kilovolt x 1 milliampere x 1 second.

(55) [~~(54)~~] Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(56) [~~(55)~~] Leakage radiation--Radiation emanating from the diagnostic assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(57) [~~(56)~~] Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeters (300 milligrams per square centimeter).

(58) [~~(57)~~] License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Texas Radiation Control Act and this chapter.

(59) [~~(58)~~] Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(60) [~~(59)~~] Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602.

(61) [~~(60)~~] Licensee--Any person who is licensed by the agency in accordance with the Texas Radiation Control Act and this chapter.

(62) [~~(61)~~] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(63) [~~(62)~~] mA--Milliampere.

(64) [~~(63)~~] mAs--Milliampere-second.

(65) [~~(64)~~] Medical research--The investigation of various health risks and diseases.

(66) [~~(65)~~] Member of the public--Any individual, except when that individual is receiving an occupational dose.

(67) [~~(66)~~] Minor--An individual less than 18 years of age.

(68) [~~(67)~~] Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(69) [~~(68)~~] Monitoring--The measurement of radiation and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(70) [~~(69)~~] Non-certified equipment--Equipment manufactured and assembled prior to certification requirements of Title 21, Code of Federal Regulations (CFR), effective as specified in Title 21, CFR, §1020.30(a).

(71) [~~(70)~~] Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement. [~~The notice requires the person receiving the notice to provide a written statement describing the following:~~]

[~~(A) corrective steps taken by the person and the results achieved;~~]

[~~(B) corrective steps to be taken to prevent recurrence; and~~]

[~~(C) the projected date for achieving full compliance. The agency may require responses to notices of violation to be under oath.~~]

(72) [~~(71)~~] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(73) [~~(72)~~] Order--A specific directive contained in a legal document issued by the agency.

(74) [~~(73)~~] Party--A person designated as such by the ALJ. A party may consist of the following:

(A) the agency; and

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer.

(75) [~~(74)~~] Patient--An individual subjected to dental examination, diagnosis, or treatment.

(76) [~~(75)~~] Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(77) [~~(76)~~] Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, and other than federal gov-

ernment agencies licensed or exempted by the United States Nuclear Regulatory Commission.

(78) [~~(77)~~] Personnel monitoring equipment--(See definition for individual monitoring devices).

(79) [~~(78)~~] Phototimer--A method for controlling radiation exposures to image receptors by the amount of radiation that reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).

(80) [~~(79)~~] Portable x-ray equipment--(See definition for x-ray equipment).

(81) [~~(80)~~] Primary protective barrier--(See definition for protective barrier).

(82) [~~(81)~~] Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) Primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree; or

(B) Secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(83) [~~(82)~~] Public dose--The dose received by a member of the public from exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(84) [~~(83)~~] Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 gray).

(85) [~~(84)~~] Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) radiation emitted to energy density levels that could reasonably cause bodily harm from an electronic device; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(86) [~~(85)~~] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the radiation machine or from any surface that the radiation penetrates.

(87) [~~(86)~~] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(88) [~~(87)~~] Radiation safety officer--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who shall be specifically authorized on a certificate of registration, and who is the primary contact with the agency.

(89) [~~(88)~~] Radiograph--An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(90) [~~(89)~~] Registrant--Any person issued a certificate of registration by the agency in accordance with the Texas Radiation Control Act and this chapter.

(91) [~~(90)~~] Regulation (See definition for rule).

(92) [~~(91)~~] Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

(93) [~~(92)~~] Remote inspection--An examination by the agency of information submitted by the registrant on a form provided by the agency.

(94) [~~(93)~~] Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(95) [~~(94)~~] Restricted area--An area, access to which is limited by the registrant for the purpose of protecting individuals against undue risks from exposure to radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(96) [~~(95)~~] Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air. (See definition for exposure.)

(97) [~~(96)~~] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(98) [~~(97)~~] Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(99) [~~(98)~~] Secondary protective barrier (See definition for protective barrier).

(100) [~~(99)~~] Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety.

(101) [~~(100)~~] Shallow dose equivalent--The dose equivalent at a tissue depth of 0.007 centimeters (7 milligrams per square centimeter) that applies to the external exposure of the skin of the whole body or the skin of an extremity.

(102) [~~(101)~~] SI--The abbreviation for the International System of Units.

(103) [~~(102)~~] Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 sievert = 100 rem).

(104) [~~(103)~~] Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(105) [~~(104)~~] Source-to-image receptor distance--The distance from the source to the center of the input surface of the image receptor.

(106) [~~(105)~~] Source-to-skin distance--The distance from the source to the skin of the patient.

(107) [~~(106)~~] Special units--The conventional units historically used by registrants, i.e., rad (absorbed dose), and rem (dose equivalent).

(108) [~~(107)~~] Stationary x-ray equipment--(See definition for x-ray equipment).

(109) [~~(108)~~] Stray radiation--The sum of leakage and scattered radiation.

(110) [~~(109)~~] Supervision--The delegating of the task of applying radiation in accordance with this section to persons not licensed in dentistry, who perform tasks under the dentist's control. The dentist assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(111) [~~(110)~~] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, and/or disposal of radiation machines. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of equipment or radiation machines, and measurements of levels of radiation present, and evaluation of administrative and/or engineered controls.

(112) [~~(111)~~] Technique chart--A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs when the radiation machine is in manual mode.

(113) [~~(112)~~] Technique factors--The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kilovolt and quantity of charge in milliampere-second;

(B) for field emission equipment rated for pulsed operation, peak tube potential in kilovolt and number of x-ray pulses; and

(C) for all other equipment, peak tube potential in kilovolt and either tube current in milliamperes and exposure time in seconds or the product of tube current and exposure time in milliampere-second.

(114) [~~(113)~~] Termination--A release by the agency of the obligations and authorizations of the registrant under the terms of the certificate of registration. It does not relieve a person of duties and responsibilities imposed by law or rule.

(115) [~~(114)~~] Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25 Texas Administrative Code, Chapter 289.

(116) [~~(115)~~] Total effective dose equivalent--For external exposures only to x-ray radiation from radiation machines, the total effective dose equivalent is equal to the deep dose equivalent.

(117) [~~(116)~~] Traceable to a national standard--This indicates that a quantity or a measurement has been compared to a national standard, for example, the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(118) [~~(117)~~] Tube--An x-ray tube, unless otherwise specified.

(119) [~~(118)~~] Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(120) [~~(119)~~] Unrestricted area (uncontrolled area)--An area, access to which is neither limited nor controlled by the registrant. For purposes of this section, "uncontrolled area" is an equivalent term.

(121) [~~(120)~~] Useful beam--Radiation that passes through the window, aperture, core, or other collimating device of the source housing. Also referred to as the primary beam.

(122) [~~(121)~~] Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Texas Radiation Control Act.

(123) [~~(122)~~] X-ray control--A device that controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes components such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(124) [~~(123)~~] X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled or equipment designed to be hand-carried; or

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location.

(125) [~~(124)~~] X-ray field--That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(126) [~~(125)~~] X-ray high-voltage generator--A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(127) [~~(126)~~] X-ray system--An assemblage of components for the controlled production of x rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(128) [~~(127)~~] X-ray subsystem--Any combination of two or more components of an x-ray system.

(129) [~~(128)~~] X-ray tube--Any electron tube that is designed to be used primarily for the production of x rays.

(130) [~~(129)~~] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(131) [~~(130)~~] Worker--An individual engaged in work under a certificate of registration issued by the agency and controlled by a registrant, but does not include the registrant.

(132) [~~(131)~~] Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The registrant may change the starting date of the year used to determine compliance by the registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(d) (No change.)

(e) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be mailed by postal service to [~~the Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, 78756-3189. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) (No change.)

(f) (No change.)

(g) Fees for Certificates of Registration for Dental Facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration shall be accompanied by a nonrefundable fee of $330 [~~$300~~]. No application will be accepted for filing or processed prior to payment of the full amount specified.

(B) A nonrefundable fee of $330 [~~$300~~] shall be paid for each certificate of registration for radiation machines used in dentistry. The fee shall be paid every two years based on the month listed as the expiration month on [~~for the two-year term of~~] the certificate of registration and [~~. The fee~~] shall be paid in full on or before the last day of the expiration month [~~and year of the certificate of registration~~].

(i) (No change.)

(ii) In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(j) [~~§289.204(h)~~] of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services) and assigned the higher fee will be used. If this certificate of registration also has additional authorized use sites, the registrant shall pay an additional 30% of the highest fee category.

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (h)(10) [~~(h)(9)~~] of this section shall be accompanied by the $330 [~~$300~~] fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(D) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services [~~Texas Department of Health~~]. The payments may be made by personal delivery to the central office, [~~Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, or mailed to the [~~Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, 78756-3189.

(2) Failure to pay prescribed fees.

(A) (No change.)

(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, [~~the certificate of registration expires and~~] the agency may implement compliance procedures as provided in subsection (k)(2)(C) of this section.

(3) (No change.)

(h) Registration of Radiation Machine Use.

(1) Application for registration.

(A) - (C) (No change.)

(D) A radiation safety officer shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The radiation safety officer shall meet the applicable requirements of paragraph (11) [~~(10)~~] of this subsection and carry out the responsibilities of paragraph (12) [~~(11)~~] of this subsection.

(E) - (K) (No change.)

(2) - (5) (No change.)

(6) Expiration of certificates of registration.

(A) Except as provided by paragraph (8) of this subsection, each [~~Effective September 1, 2004, the term of the certificate of registration is two years. Each~~] certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration. [~~Upon payment of the fee required by subsection (g)(1)(B) of this section, and if the agency does not deny the renewal in accordance with subsection (h)(4)(F) of this section, the certificate of registration will be renewed.~~]

[~~(B) If the fee is not paid and the certificate of registration is not renewed in accordance with subparagraph (A) of this paragraph, the certificate of registration expires, and the registrant is in violation of the requirements in this chapter and is subject to administrative penalties in accordance with §289.205 of this title.~~]

[(i) ~~If the registrant pays the fee required by §289.204 of this title within 30 days after expiration of the certificate of registration, the certificate of registration will be reinstated and the registrant will not be required to file an application in accordance with subsection (h) of this section.~~]

[(ii) ~~If the registrant fails to pay the fee within 30 days after expiration of the certificate of registration, the registrant shall file an application in accordance with subsection (h) of this section.~~]

(B) [~~(C)~~] If a registrant does not submit an application for renewal of the certificate of registration in accordance with paragraph (8) of this subsection, as applicable, the registrant shall on or before the expiration date specified in the certificate of registration [~~pay the fee required by subsection (g) of this section and the certificate of registration is not renewed, the registrant shall~~]:

(i) terminate use of all radiation machines within 30 days following the expiration date; [~~and~~]

(ii) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred, within 30 days following the expiration date; and [~~.~~]

(iii) pay any outstanding fees in accordance with subsection (g) of this section.

(C) [~~(D)~~] Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(7) (No change.)

(8) Renewal of certificate of registration.

(A) An application for renewal of registration shall be filed in accordance with paragraph (1) or (2) of this subsection, as applicable.

(B) If a registrant files an application in proper form before the existing certificate of registration expires, such existing certificate of registration shall not expire until the application status has been determined by the agency.

(9) [~~(8)~~] Modification, suspension, and revocation of certificate of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(i) any material false statement in the application or any statement of fact required under provisions of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(iii) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(iv) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(10) [~~(9)~~] Reciprocal recognition of out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) name and Texas licensing board number of the dentist if the radiation machines are used to irradiate humans;

(iv) copy of the applicant's current state certificate of registration or equivalent document;

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(vi) the fee as specified in subsection (g)(2) of this section; and

(vii) qualifications of personnel who will be operating the machines.

(B) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(C) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least three working days before the radiation machine is to be used in the state. If, for a specific case, the three-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(i) completed BRC Form 252-3;

(ii) copy of the notice from the agency granting reciprocity;

(iii) copy of the out-of-state registrant's operating and safety procedures; and

(iv) copy of the applicable rules as specified in the notice granting reciprocity.

(E) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(F) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety.

(G) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) name and Texas licensing board number of the dentist if the radiation machines are used to irradiate humans;

(iv) copy of the applicant's current state certificate of registration or equivalent document;

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(vi) the fee as specified in subsection (g)(1) of this section; and

(vii) qualifications of personnel who will be operating the machines.

(H) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the agency before

providing radiation services. The application shall be filed in accordance with this subsection, as applicable.

(11) [~~(10)~~] A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application.

(A) The RSO shall have the following qualifications:

(i) knowledge of potential hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used; and

(B) In addition to the qualifications in subparagraph (A) of this paragraph, documentation of the following shall be submitted to the agency:

(i) dentist radiation safety officers shall provide documentation of licensing board number and their signature on the application; or

(ii) non-practitioner radiation safety officers shall provide any one of the following:

(I) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised use of radiation machines;

(II) evidence of a valid limited general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised use of radiation machines;

(III) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least two years of supervised use of radiation machines;

(IV) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised use of radiation machines;

(V) evidence of registration with the Board of Nurse Examiners as a Registered Nurse or a Registered Nurse with an extended scope of practice (Nurse Practitioner) performing radiologic procedures, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VI) evidence of registration with the Texas State Board of Physician Assistant Examiners, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VII) evidence of:

(-a-) registration with the Texas State Board of Dental Examiners to perform radiologic procedures under a dentist's instruction and direction or evidence of a valid certificate as a registered dental hygienist; and

(-b-) at least four years of supervised use of radiation machines in the respective dentists' specialty;

(VIII) evidence of bachelor's (or higher) degree in a natural or physical science, health physics, radiological science, nuclear medicine, or nuclear engineering; or

(IX) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in medical health physics, diagnostic radiological physics, or medical nuclear physics for diagnostic x-ray facilities.

(C) Academic institutions and/or research and development facilities shall have radiation safety officers who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. (This individual may also serve as the radiation safety officer over the dental section of the facility).

(D) The radiation safety officer identified on a certificate of registration issued before September 1, 1993, need not comply with the qualification requirements in this subsection.

(12) [~~(11)~~] Responsibilities of radiation safety officers. Specific duties of the radiation safety officer include, but are not limited to, the following:

(A) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable, and to review them regularly to ensure that the procedures are current and conform with this section;

(B) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this section and each theft or loss of radiation machines, determining the cause, and taking steps to prevent its recurrence;

(C) having a thorough knowledge of management policies and administrative procedures of the registrant;

(D) assuming control and having the authority to institute corrective actions including shut-down of operations when necessary in emergency situations or unsafe conditions;

(E) maintaining records as required by this section; and

(F) ensuring that personnel are adequately trained and complying with this section, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(i) Use of Dental Radiation Machines.

(1) - (4) (No change.)

(5) Facility requirements.

(A) (No change.)

(B) Posting of notices to workers.

(i) - (ii) (No change.)

(iii) The following form, BRC [~~Bureau of Radiation Control (BRC)~~] Form 232-1, "Notice to Employees," which is found at the end of the section, [~~as contained in subparagraph (C) of this paragraph,~~] or an equivalent document containing at least the same wording as BRC Form 232-1, shall be posted by each registrant as required by this section.

Figure: 25 TAC §289.232(i)(5)(B)(iii)

(iv) (No change.)

[~~(C) Notice to employees. The following form, or an equivalent as stated in subparagraph (B)(ii) of this paragraph, shall be posted.~~]

[~~Figure: 25 TAC §289.232(i)(5)(C)~~]

(C) [~~(D)~~] Posting requirements. The registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(D) [~~(E)~~] Exceptions to posting requirements. Registrants are exempt from the posting of the radiation area requirements

in subparagraph (C) [~~(D)~~] of this paragraph provided that the operator has continuous surveillance and access control of the radiation area.

(6) Radiation machine requirements.

(A) - (D) (No change.)

(E) Beam quality. The following requirements apply to beam quality.

(i) Half-value layer.

(I) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table I. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table I, linear interpolation may be made.

Figure: 25 TAC §289.232(i)(6)(E)(i)(I)

[~~Figure: 25 TAC §289.232(i)(6)(E)(i)(I)~~]

(II) (No change.)

(ii) - (iii) (No change.)

(F) - (H) (No change.)

(I) Exposure output [~~interval~~] reproducibility. When all technique factors are held constant, including control panel selections associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

(J) - (K) (No change.)

(L) Collimation. Field limitation shall meet the requirements of paragraphs (11) and (12) [~~paragraph (12)~~] of this subsection.

(M) - (N) (No change.)

(7) - (16) (No change.)

(j) Records and reports.

(1) General provisions for records and reports.

(A) - (K) (No change.)

(L) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(i) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(I) (No change.)

(II) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:

Figure: 25 TAC §289.232(j)(1)(L)(i)(II)

[~~Figure: 25 TAC §289.232(j)(1)(L)(i)(II)~~]

(ii) - (iii) (No change.)

(M) - (N) (No change.)

(2) Reports.

(A) - (B) (No change.)

(C) Reports of exposures and radiation levels exceeding the limits.

(i) In addition to the notification required by subparagraph (B) of this paragraph, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(I) (No change.)

(II) doses in excess of any of the following:

(-a-) - (-d-) (No change.)

(-e-) any applicable limit in the certificate of registration;

(III) (No change.)

(ii) (No change.)

(iii) Each report filed in accordance with subparagraph (C)(i) of this paragraph shall include for each individual exposed: the name, a unique identification number [~~social security number~~], and date of birth. With respect to the limit for the embryo/fetus in subsection (i)(4)(A)(i)(IV) and (V) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(iv) (No change.)

(D) (No change.)

(k) Compliance and hearing procedures.

(1) (No change.)

(2) Hearing and enforcement procedures.

(A) - (B) (No change.)

(C) Compliance procedures for registrants and other persons.

(i) A registrant or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(I) steps taken by the person and the results achieved;

(II) corrective steps to be taken to prevent recurrence; and

(III) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(ii) - (iv) (No change.)

(v) When the agency determines that the action provided for in clause (viii) of this subparagraph or subparagraph (D) of this paragraph is not to be taken immediately, the agency may offer the registrant an opportunity to attend an informal meeting to discuss the following with the agency: [~~enforcement conference.~~]

(I) methods and schedules for correcting the violation(s); or

(II) methods and schedules for showing compliance with applicable provisions of the Act, the rules, registration conditions, or any orders of the agency.

(vi) Notice of any informal meeting [~~enforcement conference~~] shall be delivered by personal service, or certified mail, addressed to the last known address. An informal meeting [~~enforcement conference~~] is not a prerequisite for the action to be taken in accordance with [~~under~~] clause (viii) of this subparagraph or subparagraph (D) of this paragraph.

(vii) - (ix) (No change.)

(D) Assessment of Administrative Penalties.

(i) - (ii) (No change.)

(iii) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(I) - (II) (No change.)

(III) Adjustments to the [~~severity levels and~~] percentages of base amounts in Table IIB may be made for the presence or absence of the following factors:

(-a-) - (-f-) (No change.)

(IV) The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Texas Radiation Control Act or a rule, order, or certificate of registration issued in accordance with [~~under~~] the Texas Radiation Control Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(iv) (No change.)

(E) Severity levels of violations for registrants or other persons.

(i) (No change.)

(ii) Criteria to elevate or reduce severity levels.

(I) Severity levels [~~Violations~~] may be elevated to a higher severity level for the following reasons:

(-a-) - (-c-) (No change.)

(-d-) a violation was willful or grossly negligent; [~~. This means the violation was the result of careless regard for requirements, deception, or other indications of willfulness by the registrant or employees of the registrant; or~~]

(-e-) compliance history; or [~~.~~]

(-f-) other mitigating factors.

(II) Severity levels [~~Violations~~] may be reduced to a lower level for the following reasons:

(-a-) the registrant identified and corrected the violation prior to the agency inspection; [~~or~~]

(-b-) the registrant's actions corrected the violation and prevented recurrence; or [~~.~~]

(-c-) other mitigating factors.

(iii) (No change.)

(F) (No change.)

(G) Emergency orders.

(i) - (iii) (No change.)

(iv) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(I) - (III) (No change.)

(H) (No change.)

§289.233. Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine.

(a) - (b) (No change.)

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Agency--The Department of State Health Services [~~Texas Department of Health~~] or its successor.

(8) - (16) (No change.)

[~~(17) Board--The Texas Board of Health or its successor.~~]

(17) [~~(18)~~] Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Act and this chapter.

(18) [~~(19)~~] Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

Figure: 25 TAC §289.233(c)(18)

[~~Figure: 25 TAC §289.233(c)(19)~~]

(19) [~~(20)~~] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) Commissioner--The Commissioner of the Department of State Health Services.

(21) - (33) (No change.)

[~~(34) Enforcement conference--A meeting held by the agency with a person to discuss the following:~~]

[~~(A) safety, safeguards, or environmental problems;~~]

[~~(B) compliance with regulatory or registration condition requirements;~~]

[~~(C) proposed corrective measures including, but not limited to, schedules for implementation; and~~]

[~~(D) enforcement options available to the agency.~~]

(34) [~~(35)~~] Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(35) [~~(36)~~] Exposure rate--The exposure per unit of time.

(36) [~~(37)~~] External dose--That portion of the DE received from any source of radiation outside the body.

(37) [~~(38)~~] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(38) [~~(39)~~] Field emission equipment--Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(39) [~~(40)~~] Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the normal treatment or examination source to image distance and defined by the intersection of the major axes and the 50% isodose line.

(40) [~~(41)~~] Filter--Material placed in the useful beam to preferentially absorb selected radiation.

(41) [~~(42)~~] Fluoroscopic imaging assembly--A subsystem in which x-ray photons produce a fluoroscopic image. It includes the image receptors such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(42) [~~(43)~~] Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(43) [~~(44)~~] Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value.

(44) [~~(45)~~] Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(45) [~~(46)~~] Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(46) [~~(47)~~] High radiation area--An area, accessible to individuals, in which radiation levels from radiation machines external to the body could result in an individual receiving a DE in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(47) [~~(48)~~] Image intensifier--A device, installed in its housing, that instantaneously converts an x-ray pattern into a corresponding light image of higher energy density.

(48) [~~(49)~~] Image receptor--Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(49) [~~(50)~~] Individual--Any human being.

(50) [~~(51)~~] Individual monitoring--The assessment of DE to an individual by the use of:

(A) individual monitoring devices; or

(B) survey data.

(51) [~~(52)~~] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of DE. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters (TLDs), optically stimulated luminescence dosimeters (OSLs), pocket ionization chambers (pocket dosimeters), and electronic personal dosimeters.

(52) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(53) - (67) (No change.)

(68) Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement. [~~The notice requires the person receiving the notice to provide a written statement describing the following:~~]

[~~(A) corrective steps taken by the registrant and the results achieved;~~]

[~~(B) corrective steps to be taken to prevent recurrence; and~~]

[~~(C) the projected date for achieving full compliance. The agency may require responses to notices of violation to be under oath.~~]

(69) - (136) (No change.)

(d) (No change.)

(e) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to [~~the Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, 78756-3189. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) (No change.)

(f) (No change.)

(g) Fees for certificates of registration for veterinary facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration shall be accompanied by a nonrefundable fee of $264 [~~$240~~]. No application will be accepted for filing or processed prior to payment of the full amount specified.

(B) A nonrefundable fee of $264 shall be paid for each certificate of registration for radiation machines used in veterinary medicine. The fee shall be paid every two years based on the month listed as the expiration month on [~~for the two-year term of~~] the certificate of registration and [~~. The fee~~] shall be paid in full on or before the last day of the expiration month [~~and year of the certificate of registration~~]. In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(j) of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services) and assigned the higher fee will be used. For each additional use location on a single certificate of registration, the registrant shall pay an additional $72.

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (h)(10) [~~(h)(9)~~] of this section shall be accompanied by the $264 [~~$240~~] fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(D) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services [~~Texas Department of Health~~]. The payments may be made by personal delivery to the central office, [~~Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, or mailed to [~~the Bureau of~~] Radiation Control, Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, 78756-3189.

(2) Failure to pay prescribed fees.

(A) (No change.)

(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, [~~the certificate of registration has expired and~~] the agency may implement compliance procedures as provided in subsection (k)(2) of this section.

(3) (No change.)

(h) Registration of radiation machine use.

(1) - (5) (No change.)

(6) Expiration of certificates of registration.

(A) Except as provided by paragraph (8) of this subsection, each [~~Effective September 1, 2004, the term of the certificate of registration is two years. Each~~] certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration. [~~Upon payment of the fee required by subsection (g) of this section and if the agency does not deny the renewal in accordance with paragraph (4)(D) of this subsection, the certificate of registration will be renewed.~~]

[~~(B) If the fee is not paid and the certificate of registration is not renewed in accordance with subparagraph (A) of this paragraph, the certificate of registration expires, and the registrant is in violation of the requirements in this chapter and is subject to administrative penalties in accordance with subsection (k)(2)(D) of this section.~~]

[~~(i) If the registrant pays the fee required by subsection (g) of this section within 30 days after expiration of the certificate of registration, the certificate of registration will be reinstated and the registrant will not be required to file an application in accordance with subsection (h) of this section.~~]

[~~(ii) If the registrant fails to pay the fee within 30 days after expiration of the certificate of registration, the registrant shall file an application in accordance with subsection (h) of this section.~~]

(B) [~~(C)~~] If a registrant does not submit an application for renewal of the certificate of registration in accordance with paragraph (8) of this subsection, as applicable, the registrant shall on or before the expiration date specified in the certificate of registration [~~fails to pay the fee required by subsection (g) of this section and the certificate of registration is not renewed, the registrant shall~~]:

(i) terminate use of all radiation machines within 30 days following the expiration date; [~~and~~]

(ii) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred within 30 days following the expiration date; and [~~.~~]

(iii) pay any outstanding fees in accordance with subsection (g) of this section.

(C) [~~(D)~~] Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(7) (No change.)

(8) Renewal of certificate of registration.

(A) An application for renewal of registration shall be filed in accordance with paragraph (1) or (2) of this subsection, as applicable.

(B) If a registrant files an application in proper form before the existing certificate of registration expires, such existing certificate of registration shall not expire until the application status has been determined by the agency.

(9) [~~(8)~~] Modification, suspension, and revocation of certificates of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(i) any material false statement in the application or any statement of fact required under provisions of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(iii) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(iv) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(10) [~~(9)~~] Reciprocal recognition for out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) copy of the applicant's current state certificate of registration or equivalent document;

(iv) copy of the applicant's current operating and safety procedures pertinent to the proposed use; and

(v) fee as specified in subsection (g) of this section.

(B) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(C) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least three working days before the radiation machine is to be used in the state. If, for a specific case, the three-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(i) completed BRC Form 252-3;

(ii) copy of the notice from the agency granting reciprocity;

(iii) copy of the out-of-state registrant's operating and safety procedures; and

(iv) copy of the applicable rules as specified in the notice granting reciprocity.

(E) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(F) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety or property.

(G) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(i) a completed BRC Form 226-1;

(ii) a completed BRC Form 252-3;

(iii) the fee as specified in subsection (g) of this section; and

(iv) copy of the applicant's current state certificate of registration or equivalent document; and

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use.

(i) Use of radiation machines for veterinary medicine.

(1) - (2) (No change.)

(3) Personnel requirements.

(A) - (E) (No change.)

(F) Determination of occupational dose for the current year.

(i) - (vi) (No change.)

(vii) Occupational exposure form. The following BRC Form 233-1 (Occupational Exposure Record for a Monitoring Period), is to be used to document occupational exposures for a monitoring period.
Figure: 25 TAC §289.233(i)(3)(F)(vii)
[~~Figure: 25 TAC §289.233(i)(3)(F)(vii)~~]

(G) - (L) (No change.)

(4) Facility requirements.

(A) (No change.)

(B) Posting of notices to workers.

(i) - (ii) (No change.)

(iii) The following form, BRC [~~Bureau of Radiation Control (BRC)~~] Form 233-2, "Notice to Employees," which is found at the end of the section, or an equivalent document containing at least the same wording as BRC Form 233-2.
Figure: 25 TAC §289.233(i)(4)(B)(iii)
[~~Figure: 25 TAC §289.233(i)(4)(B)(iii)~~]

(iv) (No change.)

(C) - (H) (No change.)

(5) Radiation Machine Requirements.

(A) - (G) (No change.)

(H) Beam limiting devices. Beam limiting devices shall do the following:

(i) - (iii) (No change.)

(iv) limit the x-ray field such that the x-ray field shall not exceed:

(I) (No change.)

(II) 2.0% of the SID for the diagonal of the image receptor [~~for circular image receptors~~]; and

(v) (No change.)

(I) - (M) (No change.)

(N) Equipment performance evaluations.

(i) - (iv) (No change.)

(v) Fluoroscopic x-ray systems shall comply with the additional requirements specified in paragraph (6) of this subsection.

(6) - (11) (No change.)

(j) Records and reports.

(1) General provisions for records and reports.

(A) - (J) (No change.)

(K) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(i) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(I) (No change.)

(II) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.233(j)(1)(K)(i)(II)
[~~Figure: 25 TAC §289.233(j)(1)(K)(i)(II)~~]

(ii) - (iii) (No change.)

(L) - (P) (No change.)

(2) (No change.)

(3) Reports.

(A) - (B) (No change.)

(C) Reports of exposures and radiation levels exceeding the limits.

(i) In addition to the notification required by subparagraph (B) of this paragraph, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(I) (No change.)

(II) doses in excess of any of the following:

(-a-) - (-d-) (No change.)

(-e-) any applicable limit in the certificate of registration;

(III) (No change.)

(ii) (No change.)

(iii) Each report filed in accordance with clause (i) of this subparagraph shall include for each individual exposed: the name, a unique identification number [~~social security number~~], and date of birth. With respect to the limit for the embryo/fetus in subsection (i)(3)(A)(i)(IV) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(iv) (No change.)

(D) (No change.)

(k) Compliance and hearing procedures.

(1) (No change.)

(2) Hearing and enforcement procedures.

(A) - (B) (No change.)

(C) Compliance procedures for registrants and other persons.

(i) A registrant or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(I) steps taken by the person and the results achieved;

(II) corrective steps to be taken to prevent recurrence; and

(III) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(ii) - (iv) (No change.)

(v) When the agency determines that the action provided for in clause (viii) of this subparagraph or subparagraph (D) of this paragraph is not to be taken immediately, the agency may offer the registrant an opportunity to attend an informal meeting [~~enforcement conference~~] to discuss the following with the agency:

(I) - (II) (No change.)

(vi) Notice of any informal meeting [~~enforcement conference~~] shall be delivered by personal service, or certified mail, addressed to the last known address. An informal meeting [~~enforcement conference~~] is not a prerequisite for the action to be taken in accordance with [~~under~~] clause (viii) of this subparagraph or subparagraph (D) of this paragraph.

(vii) Except in cases in which the occupational and public health, or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing, and the registrant shall have been afforded [~~accorded~~] an opportunity to demonstrate compliance with all lawful requirements.

(viii) - (ix) (No change.)

(D) Assessment of administrative penalties.

(i) - (ii) (No change.)

(iii) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(I) - (II) (No change.)

(III) Adjustments to the [~~severity levels and~~] percentages of base amounts in Table IIB may be made for the presence or absence of the following factors:

(-a-) - (-f-) (No change.)

(IV) The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Act or requirements of this chapter, order, certificate of registration issued in accordance with [~~under~~] the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(iv) (No change.)

(E) Severity levels of violations for registrants or other persons.

(i) (No change.)

(ii) Criteria to elevate or reduce severity levels.

(I) Severity levels [~~Violations~~] may be elevated to a higher severity level for the following reasons:

(-a-) - (-c-) (No change.)

(-d-) a violation was willful or grossly negligent; [~~. This means the violation was the result of careless regard for requirements, deception, or other indications of willfulness by the registrant or employees of the registrant; or~~]

(-e-) compliance history; or [~~.~~]

(-f-) other mitigating factors.

(II) Severity levels [~~Violations~~] may be reduced to a lower level for the following reasons:

(-a-) the registrant identified and corrected the violation prior to the agency inspection; [~~or~~]

(-b-) the registrant's actions corrected the violation and prevented recurrence; or [~~.~~]

(-c-) other mitigating factors.

(iii) (No change.)

(F) - (H) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801332
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. REGISTRATION REGULATIONS

25 TAC §289.301

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 12, 401, and 1001; and Government Code, Chapters 531 and 2001.

§289.301. Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices.

(a) Purpose.

(1) (No change.)

(2) This section establishes requirements for the registration of persons who receive, possess, acquire, transfer, or use Class 3b (IIIb), International Electrotechnical Commission (IEC) Class 3B and Class 4 (IV), IEC Class 4 lasers in the healing arts, veterinary medicine, industry, academic, research and development institutions, and of persons who are in the business of providing laser services. No person shall use Class 3b (IIIb), IEC Class 3B or 4 (IV), IEC Class 4 lasers or perform laser services except as authorized in a certificate of laser registration issued by the agency in accordance with the requirements of this section. Class 1 (I) lasers [~~laser~~], IEC Class 1 and 1M, Class 2 (II) lasers [~~laser~~], IEC Class 2 and 2M, and Class 3a (IIIa) lasers [~~laser~~], IEC Class 3R and IPL devices are not required to be registered. However, use of Class 1 (I) lasers [~~laser~~], IEC Class 1 and 1M, Class 2 (II) lasers [~~laser~~], IEC Class 2 and 2M, and Class 3a (IIIa) lasers [~~laser~~], IEC Class 3R and IPL devices are subject to other applicable requirements in this section.

(b) Scope.

(1) - (4) (No change.)

(5) In addition to the requirements of this section, all registrants authorized to use Class 3b and Class 4 lasers are subject to the following requirements:

(A) (No change.)

(B) §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(C) - (D) (No change.)

(c) (No change.)

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (13) (No change.)

(14) Continuous wave--The output of a laser that is operated in a continuous rather than a pulsed mode. In this section, a laser operating with a continuous output for a period of ≥ [~~>=~~]0.25 seconds is regarded as a continuous wave laser.

(15) - (35) (No change.)

(36) Practitioner of the healing arts (practitioner)--For the purposes of this section, a person licensed to practice the healing arts by either the Texas Medical Board [~~Texas State Board of Medical Examiners~~] as a physician; the Texas State Board of Dental Examiners; the Texas Board of Chiropractic Examiners; or the Texas State Board of Pediatric Medicine [~~Texas State Board of Podiatry Examiners~~]. A practitioner's use of a laser is limited to his/her scope of professional practice as determined by the appropriate licensing agency.

(37) - (47) (No change.)

(e) - (i) (No change.)

(j) Responsibilities of registrant.

(1) - (2) (No change.)

(3) Each registrant shall inventory all Class 3B and 4 lasers in their possession at an interval not to exceed one year. The inventory record shall be maintained for inspection by the agency in accordance with subsection (ee) of this section and shall include:

(A) - (D) (No change.)

(E) if using a provider of lasers as defined in subsection (d)(38) [~~in accordance with subsection (d)(35)~~] of this section, a statement with the inventory that the registrant is using lasers provided by a provider of lasers.

(4) Notification to the agency is required within 30 days of the following:

(A) (No change.)

(B) if the registrant begins or terminates the use of a provider of lasers as defined in subsection (d)(38) [~~in accordance with subsection (d)(35)~~] of this section.

(5) - (8) (No change.)

(k) Expiration of certificates of laser registration [~~and administrative renewal~~].

(1) [~~Effective September 1, 2004, the term of the certificate of registration is two years.~~] Except as provided by subsection (m) of this section, each certificate of laser registration expires at the end of the day, in the month and year stated in the certificate of laser registration. [~~Except for subsection (m)(5) of this section, upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with subsection (i)(4) of this section, the certificate of laser registration will be administratively renewed. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.~~]

[~~(2) If the fee is not paid and the certificate of laser registration is not renewed in accordance with paragraph (1) of this subsection, the certificate of laser registration expires, and the registrant is in violation of the requirements of this chapter and is subject to administrative penalties in accordance with §289.205 of this title.~~]

[~~(A) If the registrant pays the fee required by §289.204 of this title within 30 days after expiration of the certificate of laser registration, the certificate of laser registration will be reinstated and~~

the registrant will not be required to file an application in accordance with subsection (g) of this section.]

[(B) If the registrant fails to pay the fee within 30 days after expiration of the certificate of laser registration, the registrant shall file an application in accordance with subsection (g) of this section.]

(2) [(3)] If a registrant does not submit an application for renewal of the certificate of laser registration in accordance with subsection (m) of this section, as applicable, the registrant shall on or before the expiration date specified in the certificate of laser registration [fails to pay the fee required by §289.204 of this title and the certificate of laser registration is not renewed, the registrant shall]:

(A) terminate use of all lasers and/or terminate laser servicing or laser services authorized under the certificate of laser registration;

(B) submit to the agency a record of the disposition of the lasers, if applicable, and if transferred, to whom it was transferred within 30 days following the expiration date; and [.]

(C) pay any outstanding fees in accordance with §289.204 of this title.

(3) [(4)] Expiration of the certificate of laser registration does not relieve the registrant of the requirements of this chapter.

(l) (No change.)

(m) Renewal [Technical renewal] of certificate of laser registration.

(1) An [If required by the certificate of laser registration, an] application for [technical] renewal of a certificate of laser registration shall be filed in accordance with subsection (g)(1)(A) - (B), and (E) - (G) of this section and applicable paragraphs of subsections (g)(2),(4), and (7) of this section. [An application for a technical renewal of a certificate of laser registration shall be submitted to the agency by the date specified in the certificate of laser registration. If the registrant fails to apply and pay the fee required by §289.204 of this title, or the agency does not approve the application in accordance with subsection (h)(1) of this section, the certificate of laser registration expires and the registrant is in violation of the requirements of this chapter and is subject to administrative penalties in accordance with §289.205 of this title. The registrant shall comply with the requirements of subsection (k)(3) of this section.]

[(2) Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.]

(2) [(3)] If a registrant files an application for a [technical] renewal in proper form before the existing certificate of laser registration expires [and pays the fee required by §289.204 of this title], such existing certificate of laser registration shall not expire until the application status has been determined by the agency.

[(4) An application for technical renewal of a certificate of laser registration will be approved if the agency determines that the requirements of subsection (g)(1) of this section and the applicable paragraphs of subsection (g)(2) - (8) of this section have been satisfied.]

[(5) When the date for administrative renewal in accordance with subsection (k)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the certificate of laser registration will be renewed if the fee required by §289.204 of this title is paid, the technical renewal is approved by the agency in accordance with paragraph (4) of this subsection, and the agency does not deny the renewal in accordance with subsection (i)(4) of this section.]

[(6) When the date for the administrative renewal in accordance with subsection (k)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the certificate of laser registration renewal may be denied by the agency if any one of the following conditions apply:]

[(A) the fee required by §289.204 of this title is not paid;]

[(B) the agency denies the renewal in accordance with subsection (i)(4) of this section; or]

[(C) the agency does not approve the technical renewal in accordance with paragraph (4) of this subsection.]

[(7) The requirements in this subsection are subject to the provisions of Government Code, §2001.054.]

(n) - (q) (No change.)

(r) Requirements for protection against Class 3b or 4 lasers and IPL device radiation. These requirements are for Class 3b or 4 lasers and IPL devices in their intended mode of operation and include special requirements for service, testing, maintenance, and modification. During some operations, certain engineering controls may be inappropriate. In situations where an engineering control may be inappropriate, for example, during medical procedures or surgery, the LSO shall specify alternate controls to obtain equivalent safety protection.

(1) MPE. Each registrant or user of any laser shall not permit any individual to be exposed to levels of laser or collateral radiation higher than are specified in ANSI Z136.1-2000, Safe Use of Lasers and Title 21, CFR, §1040.10 [Part 1040.10] respectively.

(2) Instructions to personnel. Personnel operating each laser presently being used or listed on the registrant's current inventory, shall be provided with written instructions for safe use, including clear warnings and precautions to avoid possible exposure to laser and collateral radiation in excess of the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [Part 1040.10]. The instructions to personnel shall be maintained in accordance with subsection (ee) of this section for inspection by the agency.

(3) Engineering controls.

(A) - (B) (No change.)

(C) Viewing optics and windows.

(i) All viewing ports, viewing optics, or display screens included as an integral part of an enclosed laser or laser product shall incorporate suitable means, (such as interlocks, filters, or attenuators, to maintain the laser radiation at the viewing position at or below the applicable MPE as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [Part 1040.10], under any conditions of operation of the laser.

(ii) (No change.)

(D) (No change.)

(E) Controlled area. With a Class 3b laser, except those that allow access only to less than 5 mW visible peak power, or Class 4 laser, a controlled area shall be established when exposure to the laser radiation in excess of the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers or the collateral limits listed in Title 21, CFR, §1040.10 [Part 1040.10] is possible. The controlled area shall meet the following requirements, as applicable.

(i) - (iv) (No change.)

(v) For Class 4 indoor controlled areas, optical paths (for example, windows) from an indoor facility shall be controlled in such a manner as to reduce the transmitted values of the laser radiation to levels at or below the appropriate ocular MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [~~Part 1040.10~~]. [~~(~~]When the laser beam must exit the indoor controlled area (as in the case of exterior atmospheric beam paths), the operator shall be responsible for ensuring that air traffic is protected from any laser projecting into navigable air space (contact Federal Aviation Administration (FAA) or other appropriate agencies, as necessary) or controlled ground space when the beam irradiance or radiant exposure is above the appropriate MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers.

(vi) When the removal of panels or protective covers and/or overriding of interlocks becomes necessary, such as for servicing, testing, or maintenance, and accessible laser radiation exceeds the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [~~Part 1040.10~~], a temporary controlled area shall be established and posted.

(4) (No change.)

(s) Additional requirements for special lasers and applications.

(1) (No change.)

(2) Laser optical fiber transmission system.

(A) (No change.)

(B) Disconnection of a connector resulting in access to radiation in excess of the applicable MPE limits, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [~~Part 1040.10~~], shall take place in a controlled area. Except for medical lasers whose manufacture has been approved by the FDA, the use of a tool shall be required for the disconnection of a connector for service and maintenance purposes when the connector is not within a secured enclosure. All connectors shall bear the appropriate label or tag specified in subsection (v)(3) of this section.

(t) Additional requirements for safe operation.

(1) Eye protection. Protective eyewear shall be worn by all individuals with access to Class 3b and/or Class 4 levels of laser radiation. Protective eyewear devices shall meet the following requirements:

(A) - (D) (No change.)

(E) be examined, at intervals not to exceed 12 months, to ensure the reliability of the protective filters and integrity of the protective filter frames. Unreliable eyewear shall be discarded. Documentation of the examination shall be made and maintained in accordance with subsection (ee) of this section for inspection by the agency.

(2) (No change.)

(u) (No change.)

(v) Caution signs, labels, and posting for lasers and IPL devices.

(1) - (2) (No change.)

(3) Labeling lasers and posting laser facilities. All signs and labels associated with Class 2, 3a, 3b, and 4 lasers shall contain the following wording.

(A) - (D) (No change.)

(E) Lasers, except lasers used in the practice of medicine, shall have a label(s) in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the limits specified in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10 [~~Part 1040.10~~], with the following wording as applicable.

(i) - (iii) (No change.)

(F) Each noninterlocked or defeatably interlocked portion of the protective housing or enclosure that is designed to be displaced or removed during normal operation or servicing, and that would permit human access to laser or collateral radiation, shall have labels as follows:

(i) - (ii) (No change.)

(iii) for collateral radiation in excess of the emission limits as described in Title 21, CFR, §1040.10 [~~Part 1040.10~~], "CAUTION - HAZARDOUS ELECTROMAGNETIC RADIATION WHEN OPEN" and "CAUTION - HAZARDOUS X-RAY RADIATION" as applicable.

(G) - (I) (No change.)

(4) In lieu of the requirements in paragraphs (1) - (3) of this subsection and subsection (dd) of this section, the agency will accept labeling and signage designated by the following:

(A) Title 21, CFR, §1040.10 [~~Part 1040.10~~];

(B) - (C) (No change.)

(w) Surveys. Each registrant shall make or cause to be made such surveys as may be necessary to comply with this section and maintain records of the surveys in accordance with subsection (ee) of this section for inspection by the agency. Surveys shall be performed at intervals not to exceed 12 months, to include but not be limited to the following:

(1) - (5) (No change.)

(x) Records/documents. Each registrant shall maintain current records/documents required by this subsection in accordance with subsection (ee) of this section for inspection by the agency.

(y) - (dd) (No change.)

(ee) Keeping records/documents. The following chart contains time requirements for keeping records/documents:
Figure: 25 TAC §289.301(ee)
[~~Figure: 25 TAC §289.301(ee)~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801333
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND LONG-TERM CARE PARTNERSHIP CERTIFICATION COURSES

28 TAC §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, 19.1023

The Texas Department of Insurance proposes amendments to §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, and 19.1014, and new §§19.1022 and 19.1023, concerning long-term care partnership certification and continuing education courses and licensee training requirements. These proposed amended and new sections are necessary to implement SB 22, enacted by the 80th Legislature, Regular Session, effective March 1, 2008, which amends the Human Resources Code Chapter 32 and the Insurance Code Chapter 1651 to establish a long-term care partnership program in Texas.

SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how they relate to other public and private coverage of long-term care. SB 22 requires the Texas Health and Human Services Commission (HHSC) to provide information and technical assistance to the Department regarding its role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives the required training and demonstrates evidence of an understanding of these plans. Additionally, SB 22 specifically requires such training to satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021 of the DRA amends §1917(b) of the Social Security Act (42 U.S.C. §1396(p)(b)) to provide for the expansion of a qualified state long-term care insurance partnership program. In order to qualify as a state long-term care insurance partnership program, a state must submit a state plan amendment to the U.S. Department of Health and Human Services for approval that, at a minimum, meets the required elements set out in §6021(a)(1)(A)(iii) of the DRA. Specifically, §6021(a)(1)(A)(iii)(V) requires the state Medicaid agency to provide information and technical assistance to the state insurance department on its role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The DRA does not prescribe any further training requirements, nor does it elaborate on the content of, or the procedures for, meeting the prescribed training requirements. Similarly, while SB 22 incorporates the training requirements of the DRA into its own provisions, it also does not elaborate on the elements necessary to satisfy the prescribed training requirements.

Section 6021(a)(1)(A)(iii)(III) of the DRA requires a qualified state long-term care partnership policy to meet several of the requirements of the Long-Term Care Insurance Model Act (Model Act) and the Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC). While the NAIC Model Act and the NAIC Model Regulation both prescribe requirements related to long-term care insurance policies, only the NAIC Model Act contains specific licensee training requirements related to the sale, solicitation, and negotiation of long-term care insurance. Neither the DRA nor SB 22 specifically requires the Department to consider the NAIC Model Act in adopting long-term care partnership training requirements. Nevertheless, the Department has determined that it is important that the Department consider the provisions of the NAIC Model Act in formulating its long-term care partnership training requirements for several reasons. First, modeling the Department's long-term care partnership training requirements on the long-term care training requirements of the NAIC Model Act will help ensure consistent regulation of the long-term care partnership market in Texas. Each provision of the NAIC Model Act, including the requirements specifically related to long-term care insurance policies and long-term care insurance training, was intended to function together to form a cohesive set of regulations for the long-term care market. SB 22 requires the Department to adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the DRA. One of the requirements under the DRA is that a long-term care partnership policy meet several of the long-term care insurance policy requirements of the NAIC Model Act and the NAIC Model Regulation. Because a long-term care partnership policy must meet several of the long-term care insurance policy requirements of the NAIC Model Act, it is especially important that the long-term care partnership training regulations adopted by the Department operate compatibly with those requirements. Modeling the Department's long-term care partnership training requirements on the training requirements of the NAIC Model Act will ensure such compatibility and consistency. This is because, like the Department's long-term care partnership insurance policy requirements, the Department's long-term care partnership training regulations will also be based on the framework of the NAIC Model Act. Because all the provisions of the NAIC Model Act were purposefully written to function together, regulations modeled after those provisions should also function together, as well. Second, both long-term care insurance and long-term care partnership insurance function in a similar capacity. Because of the similarities between the two insurance products, a licensee should develop an understanding of long-term care insurance before mastering the more complex aspects of long-term care partnership insurance, such as asset disregard and Medicaid eligibility requirements. The training requirements of the NAIC Model Act are designed to focus on the core concepts and requirements of long-term care insurance. Including those provisions in the Department's long-term care partnership training requirements should first assist licensees in acquiring an adequate understanding of the basic concepts and requirements of long-term care insurance. Licensees should then be able to supplement this foundation with an understanding of the more complex requirements of long-term care partnership insurance. Third, the provisions of the NAIC Model Act facilitate flexibility and innovation in the development of long-term care insurance coverage. Thus, the provisions of the NAIC Model Act provide for consideration of state long-term care insurance partnership programs where such programs have been approved and are operational. For example, the NAIC Model Act requires long-term care insurance training to include topics related to long-term care insurance, long-term

care services, and if applicable, qualified state long-term care insurance partnership programs. Including the relevant training requirements of the NAIC Model Act that specifically relate to long-term care partnership policies in the Department's long-term care partnership training requirements will also assist licensees in developing an adequate understanding of long-term care partnership insurance. Lastly, the provisions of the NAIC Model Act provide uniform, standardized training requirements that facilitate reciprocity among states implementing long-term care partnership programs. The Department has learned that, as of October 1, 2007, 10 states implementing a long-term care partnership program have received approval for their state plan amendments. Those states are Colorado, Florida, Georgia, Idaho, Kansas, Minnesota, Nebraska, North and South Dakota, and Virginia. Six of those 10 states, Florida, Idaho, Minnesota, Nebraska, and North and South Dakota, have incorporated the majority of the training provisions of the NAIC Model Act into their long-term care partnership training requirements, with only minor modifications. The remaining four states are incorporating provisions based upon the content of the training provisions of the NAIC Model Act in their long-term care partnership training requirements, but with more significant modifications. The Department has also been informed that six additional states, Iowa, Maine, Missouri, Oregon, Pennsylvania, and Rhode Island, have issued long-term care partnership training requirements in advance of obtaining approval of their state plan amendments. Of these six states, four plan to adopt the majority of the training requirements in the NAIC Model Act. Those states are Maine, Missouri, Oregon, and Rhode Island. The remaining two states, Iowa and Pennsylvania, plan to adopt training requirements that contain more significant modifications. Of the 16 states implementing a long-term care partnership program, 10 states are incorporating the training requirements of the NAIC Model Act into their individual state training requirements, with only minor modifications. The Department, too, is proposing long-term care partnership training requirements that incorporate the majority of the provisions of the NAIC Model Act, which will assist in the reciprocal treatment of long-term care partnership training requirements among other partnership states.

The training framework of the NAIC Model Act is comprised of a one-time training course that an individual must complete in order to sell, solicit, or negotiate long-term care insurance, and where applicable, long-term care partnership insurance. The individual must also be licensed as an insurance producer for accident and health or sickness or other lines of authority, as applicable. The NAIC Model Act also provides that an individual already licensed and selling, soliciting, or negotiating long-term care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training course within one year from the effective date of the applicable enacting legislation. In addition to the one-time training course, the NAIC Model Act requires an individual who sells, solicits, or negotiates long-term care insurance, and where applicable, long-term care partnership insurance, to complete ongoing training every 24 months thereafter. The one-time training course must be no less than eight hours in length, and the ongoing training must be no less than four hours every 24 months. The NAIC Model Act also allows both the one-time training course and the ongoing training to be approved for continuing education credit. The NAIC Model Act also requires specific topics related to long-term care insurance, long-term care services, and, where applicable, qualified long-term care insurance partnership programs, to be included in the one-time training course and the ongoing training. The NAIC Model Act prohibits any training from including insurer or company product specific information or materials. Additionally, the NAIC Model Act requires insurers to obtain verification that an individual has received the appropriate training, to maintain records of such verification, and to make such verification available to the Commissioner upon request. Lastly, the NAIC Model Act provides for reciprocity among states with regard to the training requirements.

As required by the DRA and SB 22, the Department met with this state's Medicaid agency, the Texas Health and Human Services Commission (HHSC), in August, 2007, and again in September, 2007, to discuss the Department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans. The Department and HHSC staff generally discussed the training provisions of the NAIC Model Act; the Department's existing process for certifying long-term care insurance continuing education courses and providers, whether long-term care partnership certification and continuing education courses and providers could be successfully integrated into the Department's existing processes; insurer, licensee, and provider reporting requirements; and reciprocity among the states with respect to long-term care partnership training requirements. Additionally, the Department and HHSC staff identified elements unique to long-term care partnership insurance that should be included in the Department's proposed training requirements. As a result of HHSC's recommendations and technical assistance, the Department has incorporated two additional elements, Medicaid eligibility criteria and asset disregard, into the proposed subject matter that must be included in a Department certified long-term care partnership certification course. The proposal also provides a web site address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program, including a section of the website entitled "Resource for Agent Training: Texas Medicaid Eligibility and Long-Term Care Partnership" prepared by HHSC that provides guidance on related Medicaid eligibility issues. The information and resource material provided on this website will be maintained and updated by DADS, as necessary.

The majority of the requirements of the NAIC Model Act pertaining to long-term care insurance have been incorporated into the Department's proposed amendments and new sections, with only a few necessary modifications. First, the Model Act addresses training requirements related to the sale, solicitation, or negotiation of long-term care insurance, and where applicable, long-term care partnership insurance. However, the proposed amendments and new sections apply only to long-term care partnership insurance training requirements. This change is necessary to implement the requirements of SB 22 and the DRA, which specifically relate to long-term care partnership insurance. Second, the proposed amendments and new sections do not address the use of insurer or company specific products, including marketing or sales information and materials, during training courses because §19.1008 of this title (relating to Certified Course Advertising, Modification, and Assignment), which is not amended under this proposal, currently contains the Department's prohibitions regarding the use of company logos, references to specific company products, and the presentation of advertising materials during course instruction and examination periods. Therefore, it is not necessary to adopt the provision

of the NAIC Model Act addressing the same subject matter for long-term care partnership insurance. Rather, the proposal applies the provisions of §19.1008 to long-term care partnership insurance and training requirements, as necessary. Third, the proposed amendments and new sections slightly deviate from the provisions of the NAIC Model Act with regard to records maintenance and verification requirements. Instead of requiring insurers to maintain verification that a licensee has successfully completed a long-term care partnership certification or continuing education course, the proposed sections require a licensee and a course provider to maintain records verifying that a licensee completed a Department approved long-term care partnership certification or continuing education course. This requirement serves two purposes. To the extent possible, the Department's proposed sections incorporate the requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee requirements into the existing framework for provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. Because existing Department regulations require licensees and providers to maintain course completion records, it is not necessary for the Department to adopt the provisions of the NAIC Model Act addressing those regulatory areas. Additionally, the Department will separately propose amendments to Chapter 3 Subchapter Y of this title (relating to Standards for Long-term Care Insurance Coverage Under Individual and Group Policies) that will require insurers to maintain records and submit certain documentation to the Department certifying that their appointed licensees have obtained the required long-term care partnership training. Those proposed amendments will be published in a subsequent issue of the Texas Register. Fourth, the NAIC Model Act provides that an individual already licensed and selling, soliciting, or negotiating long-term care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training course within one year from the effective date of the enacting legislation. The proposal differs from this NAIC Model Act provision in two ways. First, the proposal permits individuals already licensed and performing the acts of an agent with regard to a long-term care insurance policy on the effective date of proposed new §19.1022 (relating to Long-Term Care Partnership Certification Course) to perform the acts of an agent with regard to a long-term care partnership insurance policy on the effective date of proposed new §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. This modification is necessary for consistency with the other provisions of the proposed amendments and new sections that relate to long-term care partnership insurance. Second, the proposal shortens by approximately 60 days the NAIC allotted time period in which an appropriately licensed individual may sell, solicit, or negotiate long-term care insurance prior to completing a one-time long-term care insurance training course. This modification is necessary to implement the long-term care partnership insurance certification requirements of SB 22. SB 22 requires each long-term care benefit plan issuer that offers a plan under the partnership for long-term care program to certify to the Commissioner that each individual who sells a plan on behalf of the issuer completes training and demonstrates evidence of an understanding of these plans and how these plans relate to other public and private coverage of long-term care. This provision of SB 22 will be implemented in Department rules relating to standards for long-term care insurance coverage under individual and group policies that will be proposed separately from this proposal. These rules will propose that the SB 22 certifications be submitted periodically to the Commissioner, beginning in January 2009. If the Department adopted the provision of the NAIC Model Act without modification of the allotted time period, individuals already licensed and selling, soliciting, or negotiating long-term care insurance on March 1, 2008, could not sell, solicit, or negotiate long-term care partnership insurance unless the individual completed a one-time training course within one year from March 1, 2008, which could be approximately 60 days after the first certifications would be due to the Commissioner under the separately proposed Department rules. In those cases, the certifications submitted to the Commissioner would not meet the requirements of SB 22 or Department regulation. This is because not all individuals selling, soliciting, or negotiating long-term care partnership insurance on behalf of long-term care benefit plan issuers would have completed the required training by the time the first certifications were due. By providing the January 1, 2009 deadline in this proposal in lieu of the allotted deadline in the NAIC Model Act, long-term care benefit plan issuers will be able to certify to the Commissioner, in January 2009, that all individuals performing the acts of an agent with regard to a long-term care partnership insurance policy on their behalf have completed the required training. Lastly, while the proposal includes the three agent activities enumerated in the NAIC Model Act, the substantive requirements of proposed new §§19.1022 and 19.1023 are based on the Insurance Code §4001.051 051 (relating to acts constituting acting as an agent), which specifies agent activities that are in addition to those enumerated in the NAIC Model Act. This modification is necessary to accurately incorporate activities under Texas law that an individual may take with regard to a long-term care partnership insurance policy that may qualify as the act of an agent and, therefore, subject the individual to Department regulation. Aside from these necessary modifications of the NAIC Model Act provisions, the remaining requirements of the NAIC Model Act are incorporated into the proposed amendments and new sections without substantial change.

In general, and to the extent possible, the proposed amendments incorporate the requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training into existing Department regulations relating to provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. For example, the proposed amendments apply the existing provider registration requirements to providers seeking to offer long-term care partnership certification and continuing education courses. Likewise, the proposed amendments also apply the existing requirements related to forms and fees, course criteria, course certification, types of courses, requirements for completion of continuing education courses, and record maintenance requirements related to continuing education courses and adjuster prelicensing education and instruction to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training. Applying the existing regulations for continuing education courses and adjuster prelicensing education and instruction to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements promotes sta-

bility and consistency in Department regulation, reduces additional costs and unnecessary use of resources, and encourages uniform treatment of similar subject matter. The two new proposed sections are necessary to address the requirements that are unique to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements.

Section-by-Section Overview. The following is a section-by-section overview of the proposal.

Subchapter Title. The proposed amendment to the subchapter title is necessary to more accurately reflect the proposed additional content, which includes requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements.

§19.001. General Provisions. The proposed amendment to §19.1001(a) identifies an additional purpose of the subchapter, which is to specify procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training requirements, as authorized under the Insurance Code Chapter 1651, Subchapter C, and the Human Resources Code Chapter 32, Subchapter C.

The proposed amendment to §19.1001(d), relating to provider compliance date, deletes the subsection in its entirety because the subsection is obsolete and no longer functions as it was originally intended. Section 19.1001(d) was originally adopted to be effective January 6, 2003, and Subchapter K was later amended to be effective January 19, 2006. Therefore, the calculation of the date of compliance as provided in §19.1001(d) is no longer applicable.

§19.1002. Definitions. The proposed amendments to §19.1002(b) add a new definition of long-term care partnership insurance policy. SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. The proposed amendment to add a new §19.1002(b)(17) is necessary because proposed new §19.1022 and §19.1023, which implement SB 22 by prescribing requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee training, include references to long-term care partnership insurance policies. The proposed amendments to §19.1002(b) also amend the definition of provider to require registration with the Department in order to offer long-term care partnership certification courses. The proposed amendments to §19.1002(b) also amend the definition of provider registration to authorize utilization of the Department's process for providers seeking permission to offer long-term care partnership certification courses to licensees. Lastly, the proposed amendments to §19.1002(b) re-designate the remaining definitions accordingly.

§19.1005. Provider Registration, Instructor, and Speaker Criteria. The proposed amendment to §19.1005(a) is necessary to authorize a provider applicant to seek initial registration or renewal registration from the Department to be a long-term care partnership certification course provider in the same manner that a provider applicant must seek initial registration or renewal registration from the Department to be a continuing education provider or an adjuster prelicensing education provider. The proposed amendment to §19.1005(b) provides necessary consistency with the proposed amendment to §19.1005(a) by authorizing providers to certify and offer long-term care partnership certification courses in the same manner as, and in addition to, continuing education courses and adjuster prelicensing education courses. Lastly, the proposed amendment to §19.1005(f) provides necessary consistency with the proposed amendment to §19.1005(a) by prohibiting providers from using speakers in conjunction with long-term care partnership certification courses, unless the speaker qualifies as an instructor. Providers using speakers in conjunction with adjuster prelicensing courses and other continuing education courses that are not one-time event continuing education courses are subject to the same prohibition.

§19.1006. Course Criteria. Proposed new §19.1006(c) is necessary to prescribe the general course criteria for a Department certified long-term care partnership certification course. Specifically, proposed new §19.1006(c) requires that the course content of a Department certified long-term care partnership certification course enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in proposed new §19.1022 (relating to Long-Term Care Partnership Certification Course). Proposed new §19.1006(c) also makes clear that, *unless specifically stated otherwise,* each provision of Subchapter K applies equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes. The "unless specifically stated otherwise" provision of proposed new §19.1006(c) is necessary to provide the regulatory framework for long-term care partnership certification and long-term care partnership continuing education course requirements by incorporating such requirements into the existing regulatory framework of Subchapter K. Subchapter K currently provides such requirements for other Department licensees, including provider registration requirements, instructor, and speaker criteria requirements; course criteria requirements; course certification; submission applications, course expirations, and resubmissions requirements; types of courses; requirements for successful completion of continuing education courses; and forms and fees. The "unless specifically stated otherwise" provision is proposed in lieu of amending all of the applicable sections of Subchapter K to include specific references to long-term care partnership certification and continuing education course requirements. Therefore, under the proposal, unless specifically stated otherwise, the provisions of Subchapter K that apply to courses certified for continuing education purposes, including the proposed amendments as well as the provisions of Subchapter K that are not amended under this proposal, also apply to courses certified for long-term care partnership certification and long-term care partnership continuing education purposes. Lastly, the proposed amendments to §19.1006 re-designate the remaining subsections accordingly.

§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions. The proposed amendments to §19.1007(a) are necessary for consistency among course certification applications submitted by providers. The proposed amendment to §19.1007(a) requires providers to submit long-term care partnership certification course applications to the Department in the same manner as providers are required to submit course certification applications for Department licensee continuing education courses and adjuster prelicensing training and education courses. Specifically, the proposed amendment to §19.1007(a)(7) requires a provider to include a

statement identifying that a course is for long-term care partnership certification, along with the TDI license number and the name of the student completing the course, in the sample certificate of completion that is submitted to the Department as part of a course certification application. The proposed amendment to §19.1007(a)(8) also requires a provider to include a statement in the submitted course certification application that the course is intended for long-term care partnership certification and whether the course is primarily intended to be open to all licensees or has a restricted enrollment.

§19.1009. Types of Courses. Proposed new §19.1009(c) requires a provider to offer a long-term care partnership certification course as a complete course of study that meets the requirements of proposed new §19.1022. Proposed new §19.1022 prescribes the requirements for a long-term care partnership certification course, including course length and course content. Proposed new §19.1009(c) and proposed new §19.1022 require a provider to offer a long-term care partnership certification course only as a one-time, eight-hour unit. While a long-term care partnership certification course may be longer than eight hours in length, it may only be offered as a one-time course. Thus, under these proposed provisions, a provider could not offer or combine several, separate long-term care partnership certification courses in order to satisfy the one-time, eight-hour certification course requirement. The requirement that a long-term care partnership certification course must be provided to licensees in one sitting and as a one-time course is necessary to ensure consistency among provider materials and course content and to provide the best opportunity for meaningful feedback and interaction between licensees and course instructors. Piecemeal completion of a long-term care partnership certification course could potentially result in confusing or inconsistent course instruction, confusing or inconsistent teaching materials, and ineffective or inefficient participation by licensees. Additionally, proposed new §19.1009(c) authorizes a provider to offer long-term care partnership certification courses as classroom, classroom equivalent, or self-study instruction. This option allows a licensee optimum scheduling flexibility because a licensee may choose the most convenient time and method for completing the course based on his or her personal schedule and preferences. Overall, proposed new §19.1009(c) is consistent with and similar to the requirements related to Department licensee continuing education and adjuster prelicensing courses under this section. Lastly, the proposed amendments to §19.1009 re-designate the remaining subsections accordingly.

§19.1011. Requirements for Successful Completion of Continuing Education Courses. The proposed amendment to §19.1011(a) requires providers to use actual attendance rosters to certify completion of a certified classroom long-term care partnership certification course. Additionally, the proposed amendment to §19.1011(a) authorizes providers to establish assessment measurements or additional completion requirements for successful completion of a classroom long-term care partnership certification course, provided that the requirements are fully disclosed in the registration materials before a licensee purchases the course. These requirements are consistent with the existing requirements related to completion certification for Department licensee classroom or one-time-event continuing education courses. The proposed amendment to §19.1011(b) requires providers to use periodic interactive inquiries to determine completion of a certified classroom equivalent long-term care partnership certification course. The proposal also requires licensees to complete all inquiry sections with a minimum score of at least 70 percent for each section. These requirements are consistent with the existing requirements related to completion certification for classroom equivalent continuing education courses. Lastly, the proposed amendment to §19.1011(c) requires providers to use a written, online, or computer-based final examination as the means of completion for all certified self-study long-term care partnership certification courses. The proposal also includes requirements relating to the content of course records. These requirements are also consistent with the existing requirements related to completion certification for Department licensee self-study continuing education courses.

§19.1012. Forms and Fees. The proposed amendments to §19.1012 prescribe the same fees for administering the long-term care partnership certification program that are required for continuing education course certification. As provided under existing §19.1012(b), these fees are nonrefundable and apply unless the Department contracts with a third party to provide continuing education services. The proposed fee amounts are provider original registration $50 and provider renewal $50; continuing education course certification initial submission $10 for each hour of course credit requested on the application; resubmission, $10 for each hour of course credit requested on the application; and course assignment, $50 per assignment.

§19.1014. Provider Compliance Records. The proposed amendment to §19.1014(a) requires providers to maintain long-term care partnership certification records in the same manner and for the same length of time as continuing education and adjuster prelicensing education records. If long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the proposed amendment to §19.1014(e) grants providers 30 days from the date of notice to correct any discrepancies or to submit new documentation. The proposed amendment to §19.1014(e) also grants the same amount of time to providers with regard to adjuster prelicensing records. These proposed amendments are necessary to provide consistency with the existing provider compliance records provisions related to Department licensee continuing education records.

§19.1022. Long-Term Care Partnership Certification Course. Proposed new §19.1022 prescribes the requirements for long-term care partnership certification courses and related long-term care partnership licensee training requirements. First, proposed new §19.1022(a) prohibits an individual from performing any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy unless the licensee holds a current Life, Accident, and Health license issued by the Department and has completed a Department certified long-term care partnership certification course meeting the requirements of the subchapter. Proposed new §19.1022(b) provides that an individual that holds a current Life, Accident, and Health license issued by the Department and is performing any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of proposed new §19.1022 may perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy on the effective date of proposed new §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. Proposed new §19.1022(c) establishes the standards for a Department certified long-term care partnership certification course. Under this proposed new

subsection, a Department certified long-term care partnership certification course must be at least eight hours in length, must cover the subjects specifically described in proposed new §19.1022(g), and must be submitted to the Department for approval in compliance with the requirements of §19.1007 of Subchapter K (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions). Proposed new §19.1022(d) permits a licensee to count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of Subchapter K (relating to Licensee Requirements). Additionally, proposed new §19.1022(d) requires a licensee choosing to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 to comply with §19.1013 of Subchapter K (relating to Licensee Record Maintenance). Proposed new §19.1022(e) requires a licensee to maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Additionally, proposed new §19.1022(e) requires a licensee to provide proof of completion of a long-term care partnership certification course to the Department upon request. Proposed new §19.1022(f) sets forth the requirements for a provider issued completion certificate for a long-term care partnership certification course. Specifically, proposed new §19.1022(f) requires a provider issued completion certificate for a long-term care partnership certification course to meet the requirements of §19.1011 of Subchapter K (relating to Requirements for Successful Completion of Continuing Education Courses). Proposed new §19.1022(g) describes the course subjects that a long-term care partnership certification course outline must address, including (i) long-term care insurance; (ii) long-term care services and providers; (iii) qualified state long-term care insurance partnership programs, which must include state and federal requirements; the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; available long-term care services and providers and changes or improvements in long-term care services or providers; (iv) alternatives to the purchase of private long-term care insurance; (v) the effect of inflation on benefits and the importance of inflation protection; (vi) consumer suitability standards and guidelines; (vii) Medicaid eligibility criteria and requirements, including financial eligibility criteria and requirements; and (viii) asset disregard under qualified state long-term care partnership programs, including the interaction between asset disregard and Medicaid rules. Proposed new §19.1022(h) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership certification course to licensees. Proposed new §§19.1022(i) and §19.1022(j) address reciprocity among the states with regard to long-term care partnership training requirements. Proposed new §19.1022(i) specifies the conditions under which a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter. Specifically, under the provisions of proposed new §19.1022(i), a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter if the non-resident licensee holds a comparative, current license issued by his or her home state; the non-resident licensee's home state qualifies as a long-term care insurance partnership state; and upon Department request, both the insurer who appointed the non-resident licensee and the non-resident licensee are able to provide proof of the non-resident's completion of a long-term care partnership certification course in the non-resident licensee's home state with requirements substantially similar to those of the proposed new §19.1022. Proposed new §19.1022(j) specifies the conditions under which a non-resident licensee whose home state does not qualify as a long-term care insurance partnership state may comply with the requirements of proposed new §19.1022. Proposed new §19.1022(j) requires a non-resident licensee in such a situation to either complete a Department certified long-term care partnership certification course in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of proposed new §19.1022(i). Proposed new §19.1022(k) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 of Subchapter K (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the long-term care partnership certification course and related licensee training requirements of proposed new §19.1022. Neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements. The Department's proposed amendments and new sections have the same framework as the NAIC Model Act, which requires individuals to complete a one-time, eight-hour long-term care partnership certification course. The NAIC Model Act also does not exempt any individuals from this requirement. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete the long-term care partnership certification course required under proposed new §19.1022, regardless of their exemption status under §19.1004. Lastly, proposed new §19.1022(l) provides a website address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program.

§19.1023. Long-Term Care Partnership Continuing Education. Proposed new §19.1023 prescribes the requirements for long-term care ongoing training, which the Department is proposing to require in the form of continuing education. Proposed new §19.1023 requires the long-term care partnership ongoing training requirements of the NAIC Model Act in the form of continuing education because it is beneficial to both the Department and to licensees to do so. First, requiring the ongoing training in the form of continuing education is consistent with the provisions of the NAIC Model Act, which provide that long-term care partnership ongoing training should be certified as continuing education. Second, by incorporating long-term care partnership ongoing training into the existing continuing education regulatory framework, the Department will be able to conserve resources by utilizing existing procedures and systems to process long-term care partnership continuing education course and provider registrations and certification applications. Lastly, licensees will also benefit from this approach because they may apply the completion of long-term care partnership ongoing training requirements towards their Department licensee continuing education requirements. Proposed new §19.1023 also generally sets forth long-term care partnership licensee training requirements. Proposed new §19.1023(a) specifies how often a licensee must complete the required long-term care partnership continuing education requirements and how many hours of long-term care partnership continuing education a licensee must com-

plete. Specifically, under proposed new §19.1023(a), in each reporting period following the reporting period in which a licensee completed a long-term care partnership certification course, a licensee must complete at least four hours of Department certified continuing education, during each reporting period, as part of the licensee's continuing education requirements prescribed in §19.1003. Proposed new §19.1023(b) requires the continuing education hours required under proposed new §19.1023(a) to comply with the course criteria in §19.1006 of Subchapter K (relating to Course Criteria) and to enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in proposed new §19.1022. Proposed new §19.1023(c) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership continuing education course to licensees. Proposed new §19.1023(d) specifies the conditions under which a non-resident licensee is not required to complete long-term care partnership continuing education as required by the subchapter. Under the provisions of proposed new §19.1023(d), a non-resident licensee is not required to complete four hours of long-term care partnership continuing education if the non-resident licensee is in compliance with the long-term care partnership continuing education requirements of his or her home state and if his or her home state qualifies as a long-term care partnership insurance state. Proposed new §19.1023(e) provides the conditions under which a non-resident licensee may comply with the requirements of the subchapter if his or her home state does not qualify as a long-term care insurance partnership state. Specifically, proposed new §19.1023(e) requires a non-resident licensee in such a situation to either complete four hours of Department certified long-term care partnership continuing education in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of proposed new §19.1023(d). Lastly, proposed new §19.1023(f) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 are not exempt from the ongoing training requirements of proposed new §19.1023, which the Department is requiring in the form of continuing education. As explained previously, neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements, including the ongoing training requirements. The Department's proposed amendments and new sections follow the framework of the NAIC Model Act that requires licensees to complete no less than four hours of long-term care partnership ongoing training. The NAIC Model Act also does not exempt any individuals from the long-term care partnership ongoing training requirements. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete long-term care partnership continuing education under proposed new §19.1023, regardless of their exemption status under §19.1004.

FISCAL NOTE. Matt Ray, Deputy Commissioner for the Licensing Program, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there may be an increase in state revenue ranging from $2,820 to $7,460 annually as a result of the enforcement or administration of these proposed amendments and new sections. These estimates are based on the following factors. Currently, 58 providers are registered with the Department and offer Department certified long-term care insurance continuing education courses. Currently, there are 103 Department certified long-term care insurance continuing education courses. Fifty of those courses are open to the public. Fifty-three of those courses are not open to the public and are only made available to specified invitees by specific course providers. In the past two years, the Department has certified 59 new long-term care insurance continuing education courses. Based on these figures, the Department anticipates processing very few new course provider applications specifically related to long-term care partnership certification and continuing education courses. Based on the number of registered providers currently offering long-term care insurance continuing education courses and the number of Department certified long-term care continuing education courses, the Department expects that most of the providers interested in offering courses related to long-term care insurance, including long-term care partnership insurance, are already registered with the Department and are already offering Department certified courses. However, there may be a small number of providers that choose to register with the Department to offer long-term care partnership insurance certification or continuing education courses. In that event, the Department estimates that it will annually process no more than 10 new course provider applications for long-term care partnership certification and continuing education courses and that the $50 course provider application fee will generate no more than $500 annually. The Department anticipates that the 58 currently registered providers offering long-term care insurance continuing education courses may also file applications with the Department for long-term care partnership certification course and continuing education course certification. This expectation is based on the fact that long-term care insurance is very similar to long-term care partnership insurance and providers could amend their Department certified long-term care insurance continuing education courses or create new courses to meet the Department's long-term care partnership certification and continuing education course requirements. A long-term care partnership certification course must be at least eight hours in length and a licensee must complete at least four hours of long-term care partnership continuing education. Providers may file a course application for both a long-term care partnership certification course and a continuing education course or for only a long-term care partnership certification course or for only a continuing education course. If all 58 Department certified providers filed a course application for an eight hour long-term care partnership certification course and a four hour long-term care partnership continuing education course, the Department could certify approximately 696 additional course hours per year. Applying the $10 per credit hour application fee, this number of certified course hours could generate $6,960 annually. Of course, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for more or less than one eight hour long-term care partnership certification course and for more or less than one four hour long-term care partnership continuing education course. If all 58 Department certified providers filed a course application for only a long-term care partnership certification course that was eight hours in length, the Department could certify approximately 464 additional course hours per year. Applying the $10 per credit hour application fee, this number of certified course hours could generate $4,640 annually. Again, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for more or less than one eight hour long-term care partnership certification course. If all 58 Department certified

providers filed a course application for only one long-term care partnership continuing education course that was four hours in length, the Department could certify approximately 232 additional course hours per year. Applying the $10 per credit hour application fee, this number of certified course hours could generate $2,320 annually. As previously noted, however, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for more or less than one four hour long-term care partnership continuing education course.

Mr. Ray has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be no fiscal impact to local governments as a result of the enforcement or administration of these proposals. Mr. Ray has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering the proposed amendments and new sections.

PUBLIC BENEFIT/COST NOTE. Mr. Ray also has determined that for each year of the first five years the proposed amendments and new sections are in effect, there are several anticipated public benefits, and there will be potential costs for persons required to comply with the proposal.

Anticipated Public Benefits. The anticipated public benefits include a potential decrease in the fiscal impact of publicly financing long-term care through the Medicaid program, licensee completion of a Department certified long-term care partnership certification course, licensee completion of quality long-term care partnership continuing education courses, the increased opportunity for Department certified providers to offer long-term care partnership certification and continuing education courses, and the availability of long-term care partnership insurance coverage for Texas consumers.

In enacting SB 22, the Legislature found that long-term care is currently one of the leading cost drivers in the Medicaid program. (TEXAS SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (Enrolled), SB 22, 80th Legislature, Regular Session (October 18, 2007)). Further legislative findings indicate several other relevant factors. Although Medicaid pays for 67 percent of all nursing facility days in Texas, less than five percent of Texans have private long-term care insurance. As the population in Texas ages, the fiscal impact of publicly financing long-term care may lessen if more Texans are encouraged to purchase private long-term care insurance. However, prior to the enactment of SB 22, the law did not provide any incentive for Texans to purchase private long-term care insurance due to strict asset limits for Medicaid eligibility and required estate recovery of assets. In response, the Legislature enacted SB 22 to create a long-term care partnership program in Texas to provide the necessary incentive for Texans who can afford to purchase long-term care partnership insurance to do so. Texans who purchase long-term care partnership policies under the partnership program will be eligible for asset disregard up to the value of services covered by a private insurance policy, should they ever apply for Medicaid long-term care coverage. However, in order for a long-term care partnership insurance policy to be offered in Texas, a state plan amendment must meet the requirements of, and be approved under, the Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). This proposal implements the agent training requirements of the DRA so that a state plan amendment may be approved and long-term care partnership policies may be offered in this state.

The proposed sections require licensees seeking to perform any action constituting the act of an agent with regard to a long-term care partnership insurance policy to successfully complete a Department certified long-term care partnership certification course. Additionally, licensees must complete at least four hours of long-term care partnership continuing education in each reporting period following the reporting period in which the licensee completed a long-term care partnership certification course. It is anticipated that licensees that complete the required training will obtain specialized knowledge of long-term care partnership insurance products, which should enable them to provide better information about long-term care partnership insurance to Texas consumers. This will enable Texas consumers to make more informed choices about the purchase of such policies. Additionally, this proposal provides new business opportunities for existing Department certified providers and for persons wishing to become Department certified providers to develop and offer long-term care partnership certification and continuing education courses to licensees.

Lastly, in addition to traditional long-term care insurance products, long-term care partnership insurance coverage will be available to Texas consumers. Long-term care partnership insurance coverage provides Texas consumers with additional benefits not available through traditional long-term care insurance products. These benefits include asset protection, which prevents an individual's assets from being taken into account when determining financial eligibility for Medicaid. Additionally, an individual's assets will not subsequently be subject to Medicaid liens and recoveries.

Potential Costs for Persons Required to Comply with the Proposal.

Proposed New §19.1022 and §19.1023 Requirements for Licensees. Under Texas law, any individual who sells a long-term care benefit plan under the partnership for long-term care program must complete training and demonstrate evidence of an understanding of these plans and how they relate to other public and private coverage of long-term care. In addition, proposed new §19.1022 and §19.1023 impose licensing requirements and certification and continuing education requirements upon such licensees. No individual or licensee is required by law to sell long-term care policies under the partnership program. Therefore, the proposed requirements will apply only to licensees who hold a current Life, Accident, and Health license issued by the Department and who opt to sell long-term care partnership policies or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership policy. Proposed new §19.1022 and §19.1023 require such licensees to complete a one-time, long-term care partnership certification course no less than eight hours in length and complete no less than four hours of long-term care partnership continuing education in each reporting period following the reporting period in which the licensee completed a long-term care partnership certification course. The total probable economic costs to licensees for compliance with the proposed sections are estimated to range between $2.50 per credit hour and $13 per credit hour, for an average of $6.50 per credit hour. These estimated costs are based on the following considerations. The Department collected a national sampling of existing long-term care and long-term care partnership continuing education costs per credit hour. The credit hours ranged from one hour to 13 credit hours and their associated costs ranged from $19.95 to $52.00. Based on these figures, the range of cost per hour is $2.50 to $13, with an average cost per hour of $6.50.

This cost estimate includes credit hour estimates for long-term care and long-term care partnership courses in Texas, Pennsylvania, New York, California, Florida, Colorado, Idaho, Delaware, Iowa, Connecticut, Maine, Ohio, Utah, and Wisconsin. Because a long-term care partnership certification course is required as a one-time only course, it is anticipated that the portion of these costs related to the eight hour long-term care partnership certification course will apply to a licensee affected by this proposal only once, as long as the licensee successfully completes the certification course. Once successfully completed, a licensee is not required to take the long-term care partnership certification course again. The costs attributable to both the required eight hour long-term care partnership certification course and the required four hours of long-term care partnership continuing education may also be minimized because licensees may count the eight hour long-term care partnership certification course and the four hours of long-term care partnership continuing education towards satisfying a portion of the statutorily required continuing education requirements for a Life, Accident, and Health license. Additionally, because the proposal allows a long-term care partnership certification course and long-term care partnership continuing education course to consist of classroom, classroom equivalent, and self-study instruction, a licensee may opt to complete the required training entirely during non-business hours, thereby obviating the need for the licensee to use business time to complete the training and lose potential revenue.

Proposed §§19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 Requirements for Currently Registered Providers. Under the proposal, providers who are currently registered with the Department have the option of developing and offering long-term care partnership certification and continuing education courses to licensees. No currently registered provider is required by law to develop and offer long-term care partnership certification and continuing education courses. There will be associated costs of compliance with proposed §§19.1006, 19.1007, 19.1009, 19.1012, 19.1014, 19.1022, and 19.1023 for those providers, however, that choose to offer long-term care partnership certification and continuing education courses to licensees. Additional costs for these providers may also result from compliance with §19.1011, depending on whether the provider's long-term care partnership certification or continuing education course consists of classroom, classroom equivalent, or self-study instruction. The Department, however, anticipates that all such costs will be passed on in the form of either course registration or association membership fees, and the estimated compliance costs for the providers will therefore be significantly minimized.

The probable costs associated with proposed §§19.1006, 19.1009, 19.1011, 19.1014, 19.1022, and 19.1023 collectively result from developing a long-term care partnership certification course or continuing education course that meets the requirements of Subchapter K, monitoring attendee completion of such courses, and developing and maintaining attendance and completion records for such courses. Proposed §19.1009 authorizes a provider to offer a long-term care partnership certification or continuing education course in one of three ways, as classroom, classroom equivalent, or self-study instruction. The costs associated with classroom and self-study instruction may vary substantially based on business decisions made by individual providers. Because the Department is able to identify and quantify the variables associated with the requirements for classroom equivalent courses, the Department has prepared a cost analysis for a classroom equivalent course that meets the proposed requirements of §§19.1006, 19.1009, 19.1011, 19.1022, and 19.1023 for a long-term care partnership certification or continuing education course. The costs associated with classroom or self study instruction courses may be higher or lower than the probable costs identified by the Department for classroom equivalent courses. Providers, however, should be able to identify costs associated with classroom or self-study instruction based on their own business operations and by comparing their cost analysis to the cost analysis provided by the Department for classroom equivalent courses. Proposed §19.1009 requires that a classroom equivalent course have an interactive electronic component that provides for interactive inquiries meeting certain specifications, as well as have a means to authenticate a licensee's attendance throughout the course. The probable cost of developing a software program sufficient to present interactive inquiries and reasonably confirm licensee attendance in classroom equivalent courses is estimated to be approximately $2,834 per course for each provider that creates its own program. This cost is based on the construction of a single platform shell that the Department estimates a computer programmer can develop in 80 hours at the mean salary rate of $35.43 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm. The Department has received an estimate that 60 hours of programmer time would be required to develop such a shell program. The Department's 80-hour estimate is to allow for variances in programmer skill. The software platform is not expected to be a unique product and could be used for other classroom equivalent courses or sold to other course providers. The probable cost for developing the interactive inquiries for a classroom equivalent course is estimated to be $2.27 per inquiry for a minimum of $45.40 per course. Proposed §19.1014 requires providers to maintain long-term care partnership certification and continuing education records and course materials, including final examinations for a period of at least four years. The total probable costs for maintaining such records and course materials will vary substantially based on business decisions made by individual providers, including choosing among numerous electronic forms of storage or various methods of physical storage. Each provider, however, has the information necessary to estimate the individual provider's storage costs.

Proposed §19.1007 requires currently registered providers who choose to offer a long-term care partnership certification or continuing education course to submit a course certification application meeting specified requirements to the Department for approval. The Department estimates that the probable cost to currently registered providers of preparing and submitting the information necessary for an initial long-term care partnership certification or continuing education course application, as required in proposed §19.1007, should be less than $35. This is based on the Department's estimate that a member of a provider's office or administrative staff could complete a course certification application in one hour at the mean salary rate of $13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current.oes_tx.htm. Additionally, the Department estimates that a member of a provider's management staff could review and approve the completed application in less than thirty minutes at the mean salary rate of $42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm.

The proposed amendments to §19.1012 require a fee in the amount of $10 for each hour of course credit requested on an initial long-term care partnership certification or continuing education course application, as well as on a resubmission of a long-term care partnership certification or continuing education course application. Additionally, for providers who choose to assign a long-term care partnership certification or continuing education course, proposed §19.1012 requires an assignment fee in the amount of $50 for each course assignment. The Department estimates that the probable cost to currently registered providers of preparing and submitting a resubmission of a course certification application or a course assignment application to the Department should be less than $35. This is based on the Department's estimate that a member of a provider's office or administrative staff could complete a resubmission of a course certification application or a course assignment application in one hour at the mean salary rate of $13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current.oes_tx.htm. Additionally, the Department estimates that a member of a provider's management staff could review approve the completed application in less than thirty minutes at the mean salary rate of $42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm.

Any other costs for currently registered providers to comply with the proposed amendments and new sections result from the legislative enactment of SB 22 and are not a result of the adoption, enforcement, or administration of the proposal.

Proposed Requirements for Persons Not Currently Registered as Providers. Persons who are not currently registered with the Department as providers also have the option of registering with the Department as providers and developing and offering long-term care partnership certification and continuing education courses to licensees. No individual or entity is required by law to develop and offer long-term care partnership certification and continuing education courses. Persons who opt to become a registered provider, however, will be required to comply with proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 and will thereby incur costs for compliance. The Department anticipates that the costs of compliance with §§19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 will be the same for new providers as for those already registered with the Department. These costs are described in the Department's cost analysis in the part of this cost note pertaining to potential costs to comply with Proposed Requirements for Currently Registered Providers.

The proposed amendments to §19.1005 may result in additional costs for persons not currently registered with the Department but who wish to register with the Department as a provider and develop and offer long-term care partnership certification and continuing education courses to licensees. Proposed §19.1005 requires such persons to file a provider application with the Department. The probable cost of preparing and submitting the information necessary for a provider application should be less than $35. This is based on the Department's estimate that a member of the provider's office or administrative staff could complete a provider application in one hour at the mean salary rate of $13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current.oes_tx.htm. Additionally, the Department estimates that a member of a provider's management staff could review and approve the completed application in less than thirty minutes at the mean salary rate of $42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm. Proposed §19.1012 also requires a fee in the amount of $50 for each original provider application submitted and a renewal application fee of $50 every two years for each provider.

The Department, however, anticipates that all costs expended by newly registered providers for compliance with this proposal will be passed on in the form of either course registration or association membership fees, and the estimated compliance costs will therefore be significantly minimized.

Any other costs for newly registered providers to comply with the proposed amendments and sections result from the legislative enactment of SB 22 and are not a result of the adoption, enforcement, or administration of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

Individual Licensees. As required by the Government Code §2006.002(c), the Department has determined that approximately 101,000 individual licensees qualify as small or micro businesses under the Government Code §2006.001. However, as required by the Government Code §2006.002(c), the Department has determined that the proposed requirements will not have an adverse economic impact on these small or micro businesses. The Department has made these determinations based on the following factors.

No individual licensee is required by law to sell or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy. The proposed rules, however, provide individual licensees an economic opportunity to engage in the long-term care partnership insurance market in Texas. The Department's analysis of any possible costs for compliance with the proposal that are detailed in the Public Benefit/Cost Note section of this proposal apply to individual licensees that opt to utilize this opportunity. As indicated in the Public Benefit/Cost Note analysis, the proposal allows individual licensees to substantially reduce any possible costs for compliance with the proposal by permitting a licensee to choose the most economical method of complying with certain requirements, such as in §19.1009. Section 19.1009 provides individual licensees the option of attending long-term care partnership certification and continuing education courses on the basis of classroom equivalent or self-study instruction during non-business hours. The availability of the choice to take courses during non-business hours will obviate the need for a licensee to use business time for such courses and thereby lose potential revenue. Further, and more significantly, proposed §19.1022 permits a licensee to satisfy a portion of his currently required continuing education requirements through the completion of the long-term care partnership training prescribed in the proposal. Thus, after completing the required long-term care partnership training prescribed in the proposal, not only will the licensee be able to participate in the long-term care partnership insurance market in Texas, but the licensee will be able to apply eight to twelve hours of continuing education credit to the currently required thirty hours of continuing education for each reporting period. Because individual licensees holding a Life, Accident, and Health license must satisfy thirty

hours of continuing education for each reporting period under current regulations, the proposal is not requiring these licensees to incur costs that they are not already incurring under existing regulations. Instead, the proposal is structured in such a way as to prevent licensees from being subject to such redundant and dual costs. Additionally, individuals who hold a current Life, Accident, and Health license and qualify under the §19.1022(b) exception may also realize the additional benefit of being able to actively participate in the long-term care partnership insurance market in Texas for an allotted period of time prior to satisfying the training requirements prescribed in the proposal. These individuals will also be able to satisfy a portion of the currently required continuing education requirements through the completion of the long-term care partnership training prescribed in the proposal. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on these small or micro businesses.

Individual Providers and Provider Entities. As required by the Government Code §2006.002(c), the Department has determined that the vast majority of individual providers and provider entities qualify as small or micro businesses under the Government Code §2006.001. No small or micro business is required by law to offer long-term care partnership certification or continuing education courses to licensees or to comply with the proposed amendments. The proposed rules, however, provide an economic opportunity for the small and micro businesses that opt to develop and offer long-term care partnership certification or continuing education courses to licensees. As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on those small or micro businesses who opt to utilize such an opportunity. Adverse economic impact may result from costs associated with developing a long-term care partnership certification course or continuing education course that meets the requirements of Subchapter K, monitoring attendee completion of such courses, developing and maintaining attendance and completion records for such courses, submitting a course certification application or provider application meeting specified requirements to the Department for approval, and paying associated fees. The Department's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to these small or micro businesses.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The general purpose of the Insurance Code §§1651.104, 1651.105 and 1651.107 and the Human Resources Code §32.105, which authorize proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023, is to establish a long-term care partnership program in Texas. The Insurance Code §1651.104 specifically requires the Commissioner to adopt standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. This section also requires that the adopted standards be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). This is because a state long-term care partnership program must be approved by the U.S. Department of Health and Human Services in accordance with the requirements of the DRA.

These sections also specifically establish the requirement that individuals selling long-term care partnership insurance policies in Texas must complete long-term care partnership training. The Insurance Code §1651.105 requires each individual who sells a long-term care partnership insurance policy to complete training and demonstrate evidence of an understanding of long-term care partnership insurance policies and their relationship to other public and private coverage of long-term care. This requirement is consistent with the requirement in §6021(a)(1)(A)(iii)(V) of the DRA, which requires the state Medicaid agency to provide information and technical assistance to the state insurance department on its role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. This requirement is also incorporated by the Human Resources Code §32.105, which requires the Health and Human Services Commission to provide information and technical assistance to the Department regarding the Department's role in ensuring that each individual who sells a long-term care partnership insurance policy receives training that satisfies the training requirements imposed under the DRA.

The purpose of proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 is to protect the economic welfare of consumers that may purchase a long-term care partnership insurance policy and the public and the state of Texas generally by: (i) establishing training requirements for individuals seeking to sell or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy in Texas; and (ii) ensuring that persons offering training courses to these individuals comply with the standards prescribed by the Department with regard to provider registration, course certification, course types, course content, course completion and monitoring of completion of courses, and maintenance of records.

First, the proposal prescribes the specific training requirements applicable to individual licensees, including: (i) the requirement that a licensee complete a one-time, eight hour long-term care partnership certification course; (ii) the requirement that a licensee complete at least four hours of ongoing training, in the form of continuing education; (iii) the specific topics that must

be addressed in a long-term care partnership certification or continuing education course; and (iv) reciprocity among states with regard to long-term care partnership training. Second, the proposal provides for a uniform, third party vendor system in which persons may register with the Department to develop and offer long-term care partnership certification and continuing education courses to licensees. The proposal requires these providers to register with the Department, to submit course applications for approval, to comply with Department prescribed requirements related to courses, to monitor course completion, and to maintain records of course completion. These requirements allow the Department to exercise appropriate oversight of the registered providers to ensure that the courses they offer to licensees comply with Department regulation. For example, a provider is responsible for ensuring that each of its long-term care partnership training courses address the eight subject areas required by the proposal. A provider is responsible for ensuring that it offers its long-term care partnership training courses in an approved format. A provider must ensure that licensee attendance for each of its courses is accounted for, and it must also maintain records evidencing that a licensee successfully completed a course. These requirements collectively ensure that providers are offering meaningful, appropriate long-term care partnership training courses to licensees. Additionally, the proposal implements the purpose of the authorizing statutes, which is to ensure that individual licensees receive long-term care partnership training that will allow them to demonstrate evidence of an understanding of long-term care partnership insurance policies and how they relate to other public and private coverage of long-term care.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 and the authorizing statutes of the Insurance Code and the Human Resources Code, is to protect consumer economic interests and the state's welfare, there are no additional regulatory alternatives to the required comprehensive licensee training and provider requirements that will sufficiently protect the economic interests of consumers and the welfare of the state.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on Monday, April 21, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner for the Licensing Program, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The proposed amendments and new sections are proposed under the Insurance Code §§1651.104, 1651.105, 1651.107, and 36.001 and the Human Resources Code §32.105. The Insurance Code §1651.104 provides that the Commissioner, in consultation with the Texas Health and Human Services Commission (HHSC), shall adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021(a)(1)(A)(iii)(V) of the DRA requires the state Medicaid agency under section 1902(a)(5) to provide information and technical assistance to the state insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The Insurance Code §1651.105 requires that each individual who sells a long-term care benefit plan under the partnership for long-term care program complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. Section 1651.107 provides that the Commissioner may adopt rules as necessary to implement the subchapter. The Human Resources Code §32.105 requires the HHSC to provide information and technical assistance to the Texas Department of Insurance regarding that department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans as required by §1651.105, Insurance Code. The training must satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal DRA. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Human Resources Code §32.105; Insurance Code §§1651.104, 1651.105, and 1651.107; Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

§19.1001. General Provisions.

(a) Purpose. The purpose of this subchapter is to specify:

(1) [~~set forth~~] procedures and requirements for certification of continuing education courses and licensee continuing education requirements as authorized under the Insurance Code; [~~and~~]

(2) [~~set forth the~~] procedures and requirements for certification and approval of adjuster prelicensing education courses and adjuster examinations as authorized under the Insurance Code §§4101.054 and 4101.056; and [~~Article 21.07-4 §10.~~]

(3) procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training requirements as authorized under the Insurance Code Chapter 1651, Subchapter C, and the Human Resources Code Chapter 32, Subchapter C.

(b) - (c) (No change.)

[~~(d) Provider compliance date. Currently registered providers shall bring their registrations into compliance with this subchapter on or before the later of the date that their current registration expires or one year from the effective date of this subchapter. Providers shall bring~~

~~their currently certified course topics and criteria into compliance with this subchapter on or before the later of the date that the course's current certification expires or one year from the effective date of this subchapter. All course instructors and new applicants for provider registration and course certification shall comply with this subchapter on the effective date of the relevant sections. To the extent that any provider or course does not otherwise have a compliance date under this subsection, those providers and courses must be in compliance with this subchapter on or before December 31, 2003. A provider may elect to comply with this subchapter before it is required to do so, including re-evaluating the number of contact hours awarded for a classroom or classroom equivalent course, or for ethics course designations, by submitting a written request to the department.~~]

§19.1002. Definitions.

(a) (No change.)

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (16) (No change.)

(17) Long-term care partnership insurance policy--For purposes of §19.1022 and §19.1023 of this subchapter only, (relating to Long-Term Care Partnership Certification Course and Long-Term Care Partnership Continuing Education), a policy established under the Human Resources Code, Chapter 32, Subchapter C, and the Insurance Code, Chapter 1651, Subchapter C.

(18) [~~(17)~~] National designation certification--A professional designation which is:

(A) nationally recognized in the insurance industry; and

(B) issued by an entity that maintains a not-for-profit status and has been in existence for at least five years.

(19) [~~(18)~~] One-time-event--A type of classroom course complying with §19.1009(f) of this title.

(20) [~~(19)~~] Provider--An individual or organization including a corporation, partnership, depository institution, insurance company, or entity chartered by the Farm Credit Administration as defined in the Insurance Code §4001.108, registered with the department to offer continuing education courses for licensees, [~~and/or~~] prelicensing instruction for adjusters, or long-term care partnership certification courses for licensees.

(21) [~~(20)~~] Provider registration--The process of a provider seeking permission to offer continuing education courses for licensees, [~~and~~] prelicensing education for adjusters, or long-term care partnership certification courses for licensees.

(22) [~~(21)~~] Qualifying course--Insurance courses for which a licensee may receive continuing education credit and are:

(A) offered for credit by accredited colleges, universities, or law schools;

(B) part of a national designation certification program;

(C) approved for classroom, classroom equivalent, or participatory credit by the continuing education approval authority of a state bar association or state board of public accountancy; or

(D) certified or approved for continuing education credit under the guidelines of the Federal Crop Insurance Corporation.

(23) [~~(22)~~] Reporting period--The period from the issue date or last renewal date of the license to the expiration date of the license, generally a two-year period.

(24) [~~(23)~~] Self study--A course complying with §19.1009(e) of this title.

(25) [~~(24)~~] Speaker--An individual who shall be speaking from special knowledge regarding the business of insurance obtained through experience and position in professional or social organizations, industry, or government.

(26) [~~(25)~~] Student--A licensee or adjuster applicant enrolled in and attending a certified course for credit.

(27) [~~(26)~~] TDI license number--An identification number the department assigns to the licensee and found on the license certificate.

(28) [~~(27)~~] Visually monitored environment--An environment permitting visual identification of students and visual confirmation of attendance, including observation by camera.

§19.1005. Provider Registration, Instructor, and Speaker Criteria.

(a) A provider applicant seeking initial registration or renewal registration from the department as a continuing education provider, [~~and/or~~] adjuster prelicensing education provider, or long-term care partnership certification course provider shall submit to the department or its designee, an application on forms provided by the department and all applicable fees as set forth in §19.1012 of this title (relating to Forms and Fees). The department may require the following items in order to approve or disapprove a provider's registration request:

(1) - (6) (No change.)

(7) A statement as to whether or not the provider applicant has had any certification or approval for a professional continuing education course, [~~or~~] prelicensing education course, or a long-term care partnership certification course revoked, suspended, or placed on probation, whether by agreement or as ordered in an administrative or judicial proceeding, by a court, financial or insurance regulator, or other agency of this state, another state, or the United States;

(8) - (9) (No change.)

(b) Providers shall have a single registration and may, but are not required to, certify and offer [~~both~~] continuing education courses, [~~and~~] adjuster prelicensing education courses, and long-term care partnership certification courses.

(c) - (e) (No change.)

(f) Providers may use speakers only in conjunction with one-time-event continuing education courses. Providers may not use speakers in conjunction with other continuing education courses, [~~or~~] adjuster prelicensing courses, or long-term care partnership certification courses unless the speaker qualifies as an instructor.

(g) (No change.)

§19.1006. Course Criteria.

(a) - (b) (No change).

(c) To be certified as a long-term care partnership certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1022 of this subchapter (relating to Long-Term Care Partnership Certification Course). Unless specifically stated otherwise, this subchapter shall apply equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes.

(d) [~~(c)~~] The following course content shall not be considered applicable to a licensee's continuing education requirements:

(1) Meetings held in conjunction with the regular business of the licensee or courses or training relating to the marketing and business practices of a specific company;

(2) Course content teaching general accounting, speed reading, other general business skills, computer use, or computer software application use;

(3) Course content teaching motivation, goal-setting, time management, communication, sales, or marketing skills;

(4) Course content providing for prelicensing training qualifying examination preparation;

(5) Course content that does not meet the requirement of subsection (a) of this section; and

(6) Course content that is substantially:

(A) a glossary, dictionary, or index of insurance terms without independent distinction as to the application of these terms to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance; or

(B) a recitation of statutes, rules, legal principles, or theories without independent distinction as to the application of these issues to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance.

(e) [~~(d)~~] A single continuing education course may include both ethics and consumer protection credit topics with other topics meeting the requirements of subsection (a) of this section.

§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions.

(a) The provider shall submit the course certification application to the department or its designee and include the following information:

(1) - (6) (No change.)

(7) A sample of the certificate of completion which shall be used when licensees or adjuster applicants successfully complete the certified course for approval by the department or its designee. The certificate of completion must contain, at a minimum, the following information:

(A) a statement that the course is for continuing education credit, [~~or~~] adjuster prelicensing training, or long-term care partnership certification;

(B) - (F) (No change.)

(G) for continuing education courses, TDI license number and name of student completing the course; [~~and~~]

(H) for adjuster prelicensing training, the name of the student completing the course; and

(I) for long-term care partnership certification, TDI license number and the name of the student completing the course;

(8) A statement that the course is intended for:

(A) continuing education classroom, classroom equivalent, or self study credit and whether the course is primarily intended to be open to all licensees or shall have a restricted enrollment; [~~or~~]

(B) adjuster prelicensing education and whether the course is primarily intended to be open to all adjuster applicants or shall have a restricted enrollment; or

(C) long-term care partnership certification and whether the course is primarily intended to be open to all licensees or will have a restricted enrollment;

(9) - (10) (No change.)

(b) - (e) (No change.)

§19.1009. Types of Courses.

(a) - (b) (No change.)

(c) Providers must offer long-term care partnership certification courses only as a complete course of study that meets the requirements of §19.1022 of this subchapter (relating to Long-Term Care Partnership Certification Course). The course of study for long-term care partnership certification courses may consist of classroom, classroom equivalent, and self study instruction.

(d) [~~(c)~~] Classroom courses may include lectures, seminars, audio, video, computer-based instruction, and teleconferences that meet the following requirements:

(1) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(2) At least three students and an instructor must be involved in each presentation of the course; however, in circumstances involving remote presentations, all students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(3) Question and answer and discussion periods must be provided by:

(A) an instructor making a live presentation of the course to licensees in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor; or

(B) an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room which shall allow for immediate inquiries and responses of students to the instructor.

(4) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(e) [~~(d)~~] Classroom equivalent courses may be internet, CD-ROM, DVD, or other computer-based presentations that:

(1) May not have more than one student at any one presentation of the course.

(2) Must have an interactive electronic component that:

(A) provides for at least four interactive multiple choice inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course;

(B) requires answering 70% of the inquiries for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course;

(C) identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer;

(D) generates a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis if the student does not achieve the 70% correct response rate necessary to advance to the next section;

(E) is capable of generating at least two separate sets of inquiries for each inquiry period;

(F) provides for a method to directly transmit the final course completion results to the provider or a printed course completion receipt to be sent to the provider for issuance of a completion certificate; and

(G) has a means to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course.

(3) A comprehensive final examination is not required for classroom equivalent courses.

(f) [~~(e)~~] Self study courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the department.

(g) [~~(f)~~] One-time-event courses shall:

(1) meet the requirements of a classroom course, except that the course may be offered only in a lecture or seminar format at particular events such as conventions and organizational meetings; and

(2) be designed to be offered as a single live presentation, except that providers may offer the course as a live presentation an additional three times per year within this state.

(h) [~~(g)~~] One-time-event courses may be presented by speakers or instructors.

(i) [~~(h)~~] Qualifying courses shall be categorized as classroom, classroom equivalent, or self study based upon the teaching format in which the course is offered.

§19.1011. Requirements for Successful Completion of Continuing Education Courses.

(a) Providers shall use, at a minimum, actual attendance rosters to certify completion of a certified classroom or one-time-event continuing education course or a certified classroom long-term care partnership certification course. The department requires each student to attend at least 90% of the course. Providers shall establish a means to ensure that each student attended at least 90% of the course. Attendance records must include, at a minimum, sign-in and sign-out sheets, and the legible names, addresses, and TDI license number of each student in attendance. Providers may establish assessment measurements or any other completion requirements, in addition to attendance, for successful completion of a classroom continuing education or classroom long-term care partnership certification course, but those requirements must be fully disclosed in the registration materials before the student purchases the course. Providers shall determine successful completion of these additional requirements.

(b) Providers shall use the periodic interactive inquiries to determine completion of certified classroom equivalent continuing education or long-term care partnership certification courses. A student must complete all inquiry sections with a minimum score of at least 70% for each section.

(c) Providers shall use a written, online, or computer-based final examination as the means of completion for all certified self study continuing education or long-term care partnership certification courses. The department does not require providers to monitor continuing education or long-term care partnership certification self study examinations. Course records for each examination attempt must include, at a minimum, the date the exam was taken, the final examination score, the examination version used, the legible name, address, and the TDI license number of each student.

(d) - (g) (No change).

§19.1012. Forms and Fees.

(a) (No change.)

(b) The department establishes the following nonrefundable fees, which are necessary to administer the continuing education and long-term care partnership certification programs [~~program~~] and shall apply unless the department contracts with a third party to provide continuing education or long-term care partnership certification services:

(1) (No change.)

(2) Continuing education and long-term care partnership certification course certification:

(A) - (B) (No change).

(3) (No change).

§19.1014. Provider Compliance Records.

(a) Providers shall maintain all continuing education records, adjuster prelicensing education records, long-term care partnership certification records, attendance records, and course materials, including final examinations for at least four years, and the department or its designee may review these materials at any time.

(b) - (d) (No change)

(e) If continuing education records, adjuster prelicensing records, or long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the provider shall have 30 days from the date of notice to correct discrepancies or submit new documentation.

(f) (No change.)

§19.1022. Long-Term Care Partnership Certification Course.

(a) Except as provided in subsection (b) of this section, an individual may not perform any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy unless the individual:

(1) holds a current Life, Accident, and Health license issued by the department; and

(2) has completed a long-term care partnership certification course meeting the requirements of this subchapter.

(b) An individual who holds a current Life, Accident, and Health license issued by the department and is performing an action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of this section may perform an action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy at the time of the effective date of this section, provided the individual completes a long-term care partnership certification course meeting the requirements of this subchapter no later than January 1, 2009.

(c) This section establishes the standards for a long-term care partnership certification course. The course shall:

(1) be submitted to the department for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least eight hours in length; and

(3) cover the subjects described in subsection (g) of this section.

(d) Licensees may count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements). If a licensee chooses to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003, the licensee shall comply with §19.1013 of this subchapter (relating to Licensee Record Maintenance).

(e) A licensee shall maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Upon request, the licensee shall provide proof of completion of the long-term care partnership certification course to the department.

(f) A provider issued completion certificate for a long-term care partnership certification course must comply with the requirements of §19.1011 of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses).

(g) Course subjects for a long-term care partnership certification course outline must include topics that address:

(1) long-term care insurance;

(2) long-term care services and providers;

(3) qualified state long-term care insurance partnership programs, which must include:

(A) state and federal requirements;

(B) the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;

(C) available long-term care services and providers; and

(D) changes or improvements in long-term care services or providers;

(4) alternatives to the purchase of private long-term care insurance;

(5) the effect of inflation on benefits and the importance of inflation protection;

(6) consumer suitability standards and guidelines;

(7) Medicaid eligibility criteria and requirements, including financial eligibility criteria and requirements; and

(8) asset disregard under qualified state long-term care insurance partnership programs, including the interaction between asset disregard and Medicaid rules.

(h) Providers must meet all of the requirements of this subchapter before offering a long-term care partnership certification course to licensees.

(i) A non-resident licensee is not required to complete a long-term care partnership certification course required by this subchapter if:

(1) the non-resident licensee holds a comparable, current license issued in his or her home state;

(2) the home state of the non-resident licensee qualifies as a long-term care partnership state;

(3) upon department request, an insurer who has appointed the non-resident licensee is able to provide proof of the non-resident licensee's completion of a long-term care partnership certification course in the non-resident licensee's home state with requirements substantially similar to those in this subchapter; and

(4) upon department request, the non-resident licensee is able to provide proof of his or her completion of a long-term care partnership certification course in his or her home state with requirements substantially similar to those in this section.

(j) A non-resident licensee whose home state does not qualify as a long-term care partnership state may comply with the requirements of this subchapter by:

(1) completing a department certified long-term care partnership certification course in this state that meets the requirements of this subchapter; or

(2) designating a home state that qualifies as a long-term care partnership state and meeting the requirements of subsection (i) of this section.

(k) Licensees that may qualify for the exemptions provided under §19.1004 of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

(l) Information and resource material relating to the course subjects required in subsection (g) of this section, including a section entitled, "Resource Document for Agent Training: Texas Medicaid Eligibility and the Long-Term Care Partnership", may be found at the following website sponsored by the Texas Long-Term Care Partnership, located at www.ownyourfuturetexas.com.

§19.1023. Long-Term Care Partnership Continuing Education.

(a) In addition to completing the long-term care partnership certification course required by §19.1022 of this subchapter (relating to Long-Term Care Partnership Program Certification Course), in each reporting period following the reporting period in which a licensee completed a certification course, a licensee intending to perform any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must also complete at least four hours of department certified continuing education during each reporting period as part of the licensee's continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements).

(b) The department certified continuing education required under subsection (a) of this section must:

(1) comply with the requirements of §19.1006 of this subchapter (relating to Course Criteria); and

(2) enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in §19.1022 of this subchapter.

(c) Providers must meet all the requirements of this subchapter before offering a long-term care partnership continuing education course to licensees.

(d) A non-resident licensee is not required to complete four hours of long-term care partnership continuing education required by this subchapter if:

(1) the non-resident licensee is in compliance with the long-term care partnership continuing education requirements of his or her home state; and

(2) the home state of the non-resident licensee qualifies as a long-term care partnership state.

(e) A non-resident licensee whose home state does not qualify as a long-term care partnership state may comply with the requirements of this subchapter by:

(1) completing four hours of department certified long-term care continuing education in this state that meets the requirements of this subchapter; or

(2) designating a home state that qualifies as a long-term care partnership state and meeting the requirements of subsection (d) of this section.

(f) Licensees that may qualify for the exemptions provided under §19.1004 of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801372
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 463-6327

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PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.11

The Office of Injured Employee Counsel (OIEC) proposes new §276.11, concerning the cost of obtaining copies of an injured employee's medical documentation for use by an Ombudsman in assisting the injured employee in the Texas Department of Insurance, Division of Workers' Compensation's (DWC) administrative dispute resolution system. Section 276.11 is necessary to implement Labor Code §404.155(e) pursuant to House Bill (HB) 888, 80th Texas Legislature, Regular Session, 2007.

Proposed §276.11 is necessary to fulfill OIEC's mission critical function to assist an injured employee in DWC's administrative dispute resolution system pursuant to Labor Code §404.101. HB 724 as passed by the 80th Texas Legislature, Regular Session, 2007, provides for an administrative hearing subsequent to an Independent Review Organization's (IRO) decision in DWC's medical dispute resolution system. OIEC's Ombudsmen are anticipated to assist a majority of injured employees in these medical dispute resolution hearings as a result of an attorney's limited ability to get reimbursed for services rendered on medical issues within the workers' compensation system. Access to an injured employee's medical documentation is imperative to adequately assist an injured employee during a medical dispute resolution hearing. System participants and the Texas Department of Insurance provided extensive feedback in February 2008, which was used to develop proposed §276.11.

Ms. Luz Loza, Director of Injured Employee Services, has determined that for each year of the first five years the proposed section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Loza has also determined that for each year of the first five years the section shall be in effect, the public benefit anticipated as a result of the proposed section shall be an Ombudsman's assistance to an injured employee through both DWC's indemnity and medical dispute resolution processes at no cost to the injured employee. Further, an Ombudsman's access to injured employee's medical documentation is vital to the injured employee's success in an administrative proceeding. In claims where compensability is contested, health care providers will benefit from an Ombudsman's assistance to an injured employee in proving up a compensable injury. In these cases, a health care provider's payment for services is dependent on an Ombudsman's access to medical documentation. Access to an injured employee's medical documentation is imperative in disputed claims to an injured employee's access to necessary and appropriate medical care which would allow them to get well and back to work.

Prior to preparing this proposed rule, OIEC provided rule comment on DWC's Rule 134.120 on April 4, 2006 as an alternative method to obtaining medical documentation on behalf of an injured employee. Specifically, OIEC recommended that medical documentation be provided to OIEC at no charge to any system participant. DWC's agency response in the Chapter 134 adoption order states: The Division declines to make this change. The Division believes such a directive to be more appropriate within future Office of Injured Employee Counsel rules. Although Chapter 404 of the Labor Code provides broad access to information in the hands of the Division, it does not provide for access to information held by health care providers.

OIEC agrees that Labor Code §404.107 provides the Public Counsel access to information to DWC records. However, OIEC notes that DWC may not have in its possession the pertinent medical documentation an Ombudsman needs to properly assist injured employees. In the alternative, OIEC considered not proposing §276.11 but concluded that failure to do so was not in the interest of injured employees being assisted by OIEC's Ombudsman Program.

Labor Code §404.155 became effective immediately on June 15, 2007 with the passage of HB 888 during the 80th Texas Legislature, Regular Session, 2007. Labor Code §404.155 provides for an administrative violation for health care providers and insurance carriers that fail to comply with the section or rules adopted under the section. Section 404.155(f) provides that the Commissioner of Workers' Compensation shall enforce a violation of the section under Chapter 415 of the Workers' Compensation Act. As such, administrative violations resulting from non-compliance vary depending on the violation and considerations outlined in Labor Code §415.021(c) but shall not exceed $25,000 per day per occurrence pursuant Labor Code §415.021(a). Other costs associated with the passage of HB 888 include a insurance carrier's obligation to reimburse health care providers for copies of medical documentation provided to OIEC pursuant to Labor Code §404.155(b) and (c) and DWC Rule 134.120. Further, DWC Rule 134.120(f) provides for reimbursements for medical documentation as follows:

(1) Copies of medical documentation: $.50 per page;

(2) Copies of hospital records: an initial fee of $5.00 plus $.50 per page for the first 20 pages, then $.30 per page for the records over 20 pages;

(3) Microfilm: $.50 per page;

(4) Copies of X-ray films: $8.00 per film;

(5) Narrative reports:

(A) one to two pages: $100

(B) each page after two pages: $40 per page.

Other than costs previously identified, any additional economic costs for system participants exist under current rules or result from the enactment of HB 888 and are not a result of the adoption or administration of the proposed §276.11. There will be no difference in the cost of compliance between large, small, or micro businesses as a result of the proposed section. However, it has been determined that approximately 163 small business carriers may have an adverse economic impact by reimbursing health care providers for expenses incurred for providing OIEC an injured employee's medical documentation in accordance to Texas Labor Code §404.155 as passed by HB 888. The number of small business carriers comes from the Texas Workforce Commission data for the second quarter 2007.

OIEC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on April 25, 2008 to Brian White, Deputy Public Counsel, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel.

The new section is proposed pursuant to Texas Labor Code §§404.155, 404.101, 404.151, and 404.106. Section 404.155 provides for the Public Counsel to adopt rules regarding a time frame for the provision of copies of an injured employee's medical documentation and any other matter relating to provision of those copies. Section 404.101 requires OIEC to assist injured employees, through the ombudsman program, in the DWC's administrative dispute resolution system. Section 404.151 requires an OIEC Ombudsman to assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system. Section 404.106 provides the Public Counsel rulemaking authority to adopt rules to implement Chapter 404 of the Texas Labor Code.

The following sections are affected by this proposal:

Section 276.11 and Texas Labor Code §§404.155, 404.101, 404.151, 404.106.

§276.11. Access to Injured Employee Medical Documentation.

Upon written request, a health care provider shall provide the Office of Injured Employee Counsel (OIEC) medical documentation regarding an injured employee within five business days from the date posted on the request at no cost to OIEC. A health care provider's reimbursement from an insurance carrier for costs of documentation provided to OIEC are governed by the provisions of §134.120 of this title. A health care provider or insurance carrier that fails to comply with the requirements of this section commits an administrative violation. The Commissioner shall enforce a violation under this section in accordance with Chapter 415 of the Texas Labor Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2008.

TRD-200801300
Brian White
Deputy Public Counsel
Office of Injured Employee Counsel
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 804-4186

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER B. PUBLIC INFORMATION

34 TAC §1.200

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §1.200 concerning charges for public information. The existing §1.200 is being repealed because it was superseded and made obsolete by Acts 2005, Chapter 716, §6, 79th Legislature, 2005, effective September 1, 2005. The Texas Public Information Act currently provides, in Government Code, §552.262, that the Attorney General sets out the cost rules that state agencies must use for public information costs.

Government Code, §552.262 does allow agencies to seek a variance from the cost rules, if sought in writing and if formally approved by the Attorney General, with publication of that variance in the *Texas Register*. This agency has not sought a variance from the Attorney General's cost rules; thus, as required by statute, we abide by the Attorney General's cost rules. Therefore, since the authority that state agencies had to promulgate cost rules has been abolished, and since we do follow the Attorney General's cost rules, §1.200 is no longer needed.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by assuring uniformity with the Attorney General's rules concerning charges for providing public information. There would be no anticipated cost to the public. The proposed repeal would have no significant fiscal impact on small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Ruth Soucy, Comptroller's Open Records Section, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Government Code, §2001.039(e).

The repeal implements Government Code, §552.262.

§1.200. Charges for Public Information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801364
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

The Texas Health and Human Services Commission ("HHSC") proposes amendments to Title 40, Part 2, Chapter 104, of the rules of the Department of Assistive and Rehabilitative Services ("DARS"). This proposal amends Subchapter C, Purchase of Goods and Services, §104.255, Definitions, and Subchapter J, Protest Procedures, §104.301, Availability of Protest Procedures.

DARS' current §104.301 contains requirements for potential contractors to protest nonselection for a purchase award, in accordance with requirements of Title 1, Texas Administrative Code (TAC), Part 15, Chapter 391. As allowed by Title 1, TAC, Part 15, Chapter 391, DARS is proposing to amend §104.255 and §104.301 to establish streamlined procedures for potential contractors to protest nonselection for informal competitive procurements, which are competitive procurements with a dollar value of $25,000 or less.

In accordance with the requirements of Texas Government Code §2001.039, DARS has conducted a four-year rule review of Chapter 104 of Title 40, Part 2, of DARS rules. Chapter 104 consists of Subchapter C, Purchase of Goods and Services, §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, and 104.263, and Subchapter J, Protest Procedures, §104.301. DARS has determined that the reasons for initially adopting these rules continue to exist for the reasons detailed above. However, the rules review identified areas where amendments were needed to further define and streamline the protest procedures in accordance with state law. The proposed rule review of Chapter 104 was published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8863).

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the proposed rules will be in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules thereto.

Mr. Wheeler has determined that for each year of the first five years the proposed rules and will be in effect, the public benefit anticipated as a result of enforcing the rules will be a more effective and streamlined process for potential contractors to protest nonselection for informal competitive procurements.

Mr. Wheeler has also determined that there will be no probable economic cost to persons who are required to comply with the proposed rules. Further, in accordance with Texas Government Code §2001.022, he has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed rules and the four-year rule review which proposes readoption of the rules and readoption of §104.255 and §104.301 with amendments may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756.

SUBCHAPTER C. PURCHASE OF GOODS AND SERVICES

40 TAC §104.255

The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provide the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§104.255. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), have the following meanings, unless the context clearly indicates otherwise:

(1) Award--The act of communicating acceptance of a bid or offer to the bidder or offeror, thereby forming a contract. The term also applies to the act of communicating acceptance of a grant proposal.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Bona fide Emergency--A purchase of goods or services required as a direct result of an emergency that constitutes an immediate threat to public health or safety or which creates an imminent risk of loss to the purchasing entity that the entity documents and justifies in the procurement record.

(4) [~~(3)~~] Competition--The effort or action of two or more entities to gain commercial advantage and thereby obtain the same business from the state. For purposes of state contracts, competition must be open, equitable and just as between competitors. Competition also refers to a contract or purchasing action in which two or more qualified or responsible vendors, acting independently, may be solicited to supply goods or services on acceptable terms and under a procedure that allows the simultaneous, comparative evaluation of bids, proposals, offers, quotes, or other suitable expressions of interest by a vendor.

(5) [~~(4)~~] Contract--A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term also encompasses the written document that describes the terms of the agreement. For state contracting purposes, it generally describes the terms of a purchase of goods and/or services from a vendor or service provider; however, the term also encompasses grant arrangements.

(6) [~~(5)~~] Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or sub-recipient holding a written agreement with a grantor or sub-recipient to carry out all or part of a program.

(7) [~~(6)~~] DARS--The Department of Assistive and Rehabilitative Services.

(8) Formal Competitive Procurement--A competitive procurement with an estimated value that equals or exceeds the value required for posting the solicitation on the Electronic State Business Daily.

(9) [~~(7)~~] Goods--A transportable article of trade or commerce that can be bartered or sold. Goods do not include services or real property. For health and human services agencies, goods does not include:

(A) goods within the definition of "automated information system" under Chapter 2157, Government Code;

(B) goods obtained under an Interagency Contract or an Interlocal Contract; or

(C) goods used in support of a health and human services agency's health care programs and acquired under §2155.144, Government Code.

(10) [~~(8)~~] HHSC--Health and Human Services Commission.

(11) Informal Competitive Procurement--A competitive procurement with a value that is less than the value required for posting the solicitation on the Electronic State Business Daily.

(12) Notice of Award--For a formal competitive procurement, a written notice that is sent to a bidder or offeror notifying the bidder or offeror that they have been awarded a purchase. For an informal competitive procurement, a verbal or written notification that is provided to a bidder or offeror notifying the bidder or offeror that they have been awarded a purchase.

(13) [~~(9)~~] Notice of Provider Enrollment (NPE)--Notice announcing the availability of a provider enrollment opportunity.

(14) [~~(10)~~] Offer--A proposal by one party to another that invites the other party to accept. An offer may consist of a proposal to sell something, buy something, take some action, or refrain from doing something. If the offer is accepted and there is an exchange of consideration, a contract is created.

(15) [~~(11)~~] Procurement--The acquisition of goods or services. Procurement can refer to the act of obtaining something through effort, and therefore does not necessarily involve the exchange of consideration or create a contract. The term is broader than purchasing, which has the connotation of an exchange of consideration (i.e., buying), but the terms are generally used interchangeably.

(16) [~~(12)~~] Provider--An individual or business entity that supplies goods or services to a purchasing entity under an agreement or contract to provide such goods or services.

(17) [~~(13)~~] Proposal--Binding offer submitted by a respondent in response to a Request for Proposals (RFP).

(18) [~~(14)~~] Purchase Order--A written document issued by DARS to accept a bid or an offer, thereby creating an agreement between the bidder or offeror and DARS.

(19) [~~(15)~~] Solicitation--A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications. May also apply to grant arrangements.

(20) [~~(16)~~] Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and materials required in the original contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801328
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 424-4050

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SUBCHAPTER J. PROTEST PROCEDURES

40 TAC §104.301

The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provide the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§104.301. Availability of Protest Procedures.

(a) A potential recipient of a purchase award may protest a purchase award under the following circumstances:

(1) the purchase award was made under a formal or informal competitive procurement method in accordance with 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies), and the potential recipient submitted a bid or proposal that was not selected for the award; or

(2) the purchase award was a sole source or emergency procurement.

(b) The protest must be limited to matters relating to the protester's qualifications, the suitability of the goods or services offered by the protester or alleged irregularities in the procurement process.

(c) Protesters must submit written protests to the Department of Assistive and Rehabilitative Services (DARS) designated purchaser.

(d) In order for the protest to be evaluated on its merits, it must state:

(1) the protester's company name; [:]

(2) specific action the protester is requesting be reconsidered;

(3) how the decision, action, or inaction by DARS violated published DARS policy, or state or federal laws and regulations regarding procurement;

(4) the protester's claim with specific supporting information such as references to pertinent parts of the original request for proposal, offer, bid, or the award documents;

(5) an explanation of the facts under disagreement; and

(6) the subsequent action the protester is requesting.

(e) The written protest must be signed by the protester or the protester's authorized representative.

~~[(1) signed by the protester or the protester's authorized representative and]~~

~~[(2) delivered by hand, certified mail return receipt requested, facsimile or other verifiable delivery service.]~~

~~[(f) DARS must receive the protest no later than seven calendar days after DARS' notice of decision to execute a purchase award.]~~

(f) [~~(g)~~] Failure to comply with any of the requirements in [~~subsections (a) - (f) of~~] this section will result in dismissal of the protest.

(g) The DARS staff member who is making the decision regarding the protest may, at his or her sole discretion, request supplemental oral or written information from the protester or DARS staff if needed, to evaluate the protest.

~~[(h) The DARS Commissioner or designee will review the protest and issue a final determination regarding the protest. The Commissioner or designee may, at his or her sole discretion, request supplemental oral or written information from the protester or DARS staff if the information is necessary to evaluate the protest.]~~

(h) [~~(i)~~] DARS limits the review of the protest to a desk review of: [~~the materials supplied by the protester and the DARS staff that made the award decision.~~]

(1) the materials supplied by the protester and the DARS staff member who made the award decision; and

(2) any supplemental oral or written information requested by DARS and provided by the protester or DARS staff member.

~~[(j) DARS sends the protester a written notice of the final determination within 30 days of receiving the written protest.]~~

(i) [~~(k)~~] DARS will not execute a purchase award for a purchase that is the subject of a protest filed in accordance with this section until DARS provides the protester with a written disposition of the protest. DARS may execute a purchase award when there is a pending protest if there is a bona fide emergency or when state or federal laws require a purchase to be awarded by a particular date.

(j) [~~(l)~~] DARS's decision on the protest is the final administrative action taken by DARS.

(k) [~~(m)~~] This section does not grant any additional standing or right for an unsuccessful or prospective bidder to protest the award of a contract than otherwise exists in law.

(l) [~~(n)~~] The right to protest non-selection for a purchase award does not apply to:

(1) the award of grants or subcontracts;

(2) goods or services purchased pursuant to the Interagency Cooperation Act, Chapter 771, Government Code, or Interlocal Cooperation Act, Chapter 791, Government Code;

(3) the lease, purchase, or lease-purchase of real property;

(4) interstate or international agreements executed in accordance with applicable law; or

(5) goods or services purchased under contracts or processes administered by any other state agency.

(m) The following protest procedures are for purchase awards made under a formal competitive procurement.

(1) The protester must deliver the written protest to DARS by hand, certified mail return receipt requested, facsimile, or other verifiable delivery service.

(2) DARS must receive the protest no later than seven calendar days after DARS's notice of decision to execute a purchase award.

(3) The DARS commissioner or designee reviews the protest and issues a final determination regarding the protest.

(4) DARS sends the protester a written notice of the final determination within 30 days after receiving the written protest.

(n) The following protest procedures are for purchase awards made under an informal competitive procurement.

(1) The protester must deliver the written protest to DARS by email, hand, facsimile, or other verifiable delivery service.

(2) DARS must receive the protest no later than 24 hours, excluding weekends and state and federal holidays, after the time and date by which DARS told potential recipients that a decision would be made regarding the purchase award.

(3) The DARS purchasing manager reviews the protest and issues a final determination regarding the protest.

(4) The purchasing manager sends the protester a written notice of the final determination within 1 workday after the purchasing manager receives the written protest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801329
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: April 20, 2008
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1053

The Texas Education Agency withdraws the proposed new §102.1053 which appeared in the January 4, 2008, issue of the *Texas Register* (33 TexReg 49).

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801373
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: March 10, 2008
For further information, please call: (512) 475-1497

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER P. REVIEW AND ADJUSTMENT OF A SUPPORT ORDER

1 TAC §55.851

The Office of the Attorney General, Child Support Division adopts new Subchapter P, §55.851, concerning the review and adjustment of a child support order for persons receiving Title IV-D services. The new section is adopted without changes to the proposed text as published in the February 8, 2008 issue of the *Texas Register* (33 TexReg 1027) and will not be republished.

The purpose of the new section is to describe the procedures of the Title IV-D agency for review and adjustment of a child support order in compliance with federal and state law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Family Code §231.002, which authorizes the Office of the Attorney General to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801368
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: March 30, 2008
Proposal publication date: February 8, 2008
For further information, please call: (512) 936-1841

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 37. LEGAL

SUBCHAPTER A. RULES OF PRACTICE

The Texas Alcoholic Beverage Commission adopts the repeal of §37.2, relating to the rules governing contested cases before county courts; §37.3, relating to the service of pleadings and notice of hearing; §37.4, relating to notice of hearing; and adopts new §37.2, relating to procedure in contested cases, without changes to the proposal as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8245). The rules will not be republished.

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by the agency under Texas Government Code, Chapter 2001. Sections 37.2 - 37.4 have been reviewed, and the commission has determined that they can be simplified because the same rules and procedures apply to contested cases before county courts and the State Office of Administrative Hearings. New §37.2 replaces the repealed sections and adopts the provisions of Texas Government Code, Chapter 2001, and the rules adopted by the State Office of Administrative Hearings for all contested cases for which notice and hearing are required.

The commission received no comments regarding the proposal during the comment period.

16 TAC §37.2

The repeal of the existing rule is authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Texas Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Sections 5.31, 5.43, and 11.65 of the Alcoholic Beverage Code are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801335
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: March 26, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 206-3204

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16 TAC §37.2

The adoption of the new rule is authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Texas Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Sections 5.31, 5.43, and 11.65 of the Alcoholic Beverage Code are affected by the new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801334
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: March 26, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 206-3204

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16 TAC §37.3

The repeal of the existing rule is authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Texas Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Sections 5.31, 5.43, and 11.65 of the Alcoholic Beverage Code are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801336
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: March 26, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 206-3204

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16 TAC §37.4

The repeal of the existing rule is authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Texas Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Sections 5.31, 5.43, and 11.65 of the Alcoholic Beverage Code are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801337
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: March 26, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.141

The Texas Real Estate Commission (TREC) adopts amendments to §535.141, concerning Initiation of Investigation without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9906) and will not be republished.

The amendments to §535.141(a) and (b) are adopted to comply with new legislation that amended Texas Occupations Code Chapters 1101 and 1102 enacted during the 80th Legislative Session, Regular Session, by Senate Bill 914. Senate Bill 914 in part amends Texas Occupations Code §1101.204 to authorize commission staff to file complaints and conduct investigations as necessary to enforce Chapter 1101 and Chapter 1102. The amendment to §535.141(a) clarifies that the section applies to all persons licensed or registered by the Texas Real Estate Commission, including persons licensed under Chapter 1102. The amendment to §535.141(b) deletes references that are redundant or conflict with the recent amendments to §1101.204.

The new text in §535.141(b) is adopted to comply with new legislation that included amendments to Texas Government Code §402.031 enacted during the 80th Legislative Session, Regular Session, by House Bill 716 relating to mortgage fraud. The amendments to §535.141(b) recognize that while Texas Occupations Code §1101.204(e) does not permit staff to conduct convert investigations except as authorized by the commission, such investigations may be conducted if they relate to a report of fraudulent activity as defined in §402.031. Similarly, the amendments reflect that while Texas Occupations Code §1101.204(d) requires TREC to provide notice to a licensee who is the subject of an

investigation, new Texas Government Code §402.031 requires TREC to withhold such information from the subject of the report if it is a report of fraudulent activity as defined in §402.031.

The reasoned justification for the rule as adopted is compliance with recent statutory revisions as described above.

No comments were received regarding the amendments as proposed.

The amendments to the rule are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the amendments are Texas Occupations Code, Chapters 1101 and 1102, and Texas Government Code, Chapter 402. No other statute, code or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801272
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective date: March 23, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts amendments to §§5.4101, 5.4201, 5.4401, and 5.4501, concerning Texas Windstorm Insurance Association (TWIA) policy forms, endorsements, and manual rules. The sections are adopted with changes to the proposed text published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 52).

REASONED JUSTIFICATION. The purpose of TWIA, as stated in the Insurance Code §2210.001, is to provide windstorm and hail coverage to residents and businesses in the designated catastrophe areas that are unable to obtain such coverage in the voluntary market. The Insurance Code §2210.351 requires that TWIA must file with the Department modifications of policy and endorsement forms that TWIA proposes to use, and authorizes the Commissioner to approve, disapprove, or modify the modifications of policy forms and endorsements in writing. The Insurance Code §2210.008 requires that the Commissioner approve TWIA policy forms by order after notice and a hearing. The Insurance Code §2210.351 also requires that TWIA must file with the Department each modification of the rules manual it proposes to use, and authorizes the Commissioner to approve, modify, or disapprove in writing each modification of the rules manual submitted.

Section 5.4101 adopts by reference the TWIA Dwelling and Commercial Policies; §5.4201 identifies endorsements available for the TWIA Dwelling, Commercial, and Texas Special Mobile Home Windstorm and Hail Insurance Policies, and adopts such endorsements by reference; §5.4401 adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy; and §5.4501 adopts by reference a rules manual for TWIA. Adopted §5.4101 is necessary to approve TWIA Commercial and Dwelling Policies that contain a clarified flood exclusion clause (specifically excluding losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunami, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not) and a clarified deductible clause that specifies that deductibles apply on a per item per occurrence basis. References to the Insurance Code in existing TWIA Commercial and Dwelling Policies are updated to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017, effective April 1, 2007.

Adopted §5.4201 is necessary to approve an optional new endorsement for the TWIA Dwelling Policy that provides for an annual increase in the dwelling limit of liability by a percentage determined from a building cost index to be designated by TWIA. Adopted §5.4201 is also necessary to conform references to the Insurance Code in existing endorsements for TWIA Commercial and Dwelling Policies to the non-substantive Code revision enacted by the 79th Legislature in HB 2017, and to delete from §5.4201 an endorsement for the TWIA Commercial Policy (Form No. TWIA-65, Large Deductible Endorsement). Form No. TWIA-65 is obsolete following the approval of new commercial deductible options in Commissioner's Order No. 06-1110, issued October 16, 2006.

Adopted §5.4401 is necessary to approve a Texas Special Mobile Home Windstorm and Hail Insurance Policy containing a clarified flood exclusion clause (specifically excluding the same losses or damages as the modified TWIA Dwelling and Commercial Policies) and to conform references to the Insurance Code to the non-substantive Code revision enacted by the 79th Legislature in HB 2017.

Adopted §5.4501 is necessary to implement updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits established by Commissioner's Order No. 06-1110 and delete obsolete options and associated credits; clarify that commercial and dwelling deductibles apply on a per item per occurrence basis; make known the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage determined from a building cost index to be designated by TWIA; and designate Form No. TWIA-65 as unavailable.

The modifications of the flood exclusion clause clarify existing language in the TWIA Dwelling Policy, the TWIA Commercial Policy, and the Texas Special Mobile Home Windstorm and Hail Insurance Policy. The adopted modified flood exclusion clause specifically excludes any and all losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunami, seiche, overflow of streams or other bodies of

water, or spray from any of these, all whether driven by wind or not. The existing flood exclusion clauses in all three policies currently exclude flood losses, but do not contain as detailed a list of exclusions as the adopted modified clauses. It is particularly important that TWIA policy forms incorporate a clarified flood damage clause, so that policyholders fully understand that the risk of flood damage is not covered under the TWIA policies, and may consider the separate purchase of federal flood insurance if available.

The modification of the deductible clause in both the Commercial and Dwelling Policies clarifies that deductibles apply on a per item per occurrence basis. This modification reflects the current practice and is not a substantive change in the TWIA application of deductibles following a loss. In addition, Commissioner's Order No. 06-1110, dated October 16, 2006, established three commercial deductible options of one percent, two percent, and five percent, based on the limit of insurance for the covered item and associated credits for each option. Two examples in the TWIA Commercial Policy illustrating the effect of coinsurance on coverage are updated by using a new value for a hypothetical deductible from the options established in Commissioner's Order No. 06-1110. A Commercial Policy endorsement (Form No. TWIA-65, Large Deductible Endorsement), is repealed because it is obsolete following the revision in TWIA commercial deductible options. Updates to the existing TWIA rules manual include new commercial deductible options and a schedule of credits for the new options (and delete obsolete commercial deductible options and schedules of credits for the obsolete options) (Rules Manual Section I, General Rules, subsection J.2). These updates will assist agents by providing a correct schedule of credits for current commercial policy deductible options. Other updates clarify that commercial deductibles apply per item per occurrence (Rules Manual Section I, General Rules, subsection J.2), and advise that Commercial Policy endorsement Form No. TWIA-65 is no longer available (Rules Manual Section II, Policy Forms and Endorsements, subparagraph A.2.b.(7)).

Additional modifications to the existing TWIA Dwelling Policy, the existing TWIA Commercial Policy, and the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy update references to the Government Code Chapter 418 concerning the declaration of a disaster and provide in each existing policy form a lengthier disclosure of Insurance Code appeal procedures. The lengthier disclosure of Insurance Code appeal procedures does not substantively change the legal procedures available to policyholders through the existing policies, but does update the Insurance Code references to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. An adopted modification of the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy deletes an obsolete reference to the Board of Insurance and replaces it with the Texas Department of Insurance. The adopted modifications of two existing endorsements (Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling)), do not change the substantive terms of the endorsements, but provide updated references to the Insurance Code Chapter 2210 to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. The updating of legal references in the policy forms and endorsements will assist policyholders and agents locate and review applicable law.

A new optional dwelling endorsement (Form No. TWIA-200, Adjusted Building Cost Endorsement), adopted by reference in amended §5.4201(4)(Q), provides for an annual increase in the dwelling limit of liability by a percentage determined from a building cost index to be designated by TWIA. This endorsement will be provided, at the insured's option, at no additional premium. The resulting increases in limits are not mandatory and may be subsequently modified or rejected by the insured. An update to the existing TWIA rules manual reflects the availability of the new dwelling endorsement (Rules Manual Section II, Policy Forms and Endorsements, subparagraphs A.2.a.(11) and A.2.c.(11)). Non-substantive changes in Rules Manual Section II are also made to the lettered and numbered designations of endorsements listed after amended Rules Manual Section II, subparagraphs A.2.a.(11) and A.2.a.c.(13). The adoption of the new dwelling endorsement (Form No. TWIA-200, Adjusted Building Cost Endorsement) and the amendment of the rules manual to reflect the availability of the new endorsement will assist policyholders and agents maintain adequate windstorm and hail insurance coverage.

Clarifying through modified policy forms, endorsements, and the rules manual what is covered and what is excluded under TWIA policies benefits TWIA policyholders by enabling TWIA to pay only for losses that were intended to be covered by its policies and eliminating unnecessary disputes that could lead to higher rates. TWIA members also benefit by avoiding assessments for losses not intended to be covered by TWIA policies, and the general revenue of the state avoids the loss of premium taxes. The adopted modifications will assist TWIA to continue to achieve its statutory purpose of providing a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state.

The only change to the proposed amendments as published is the change of the proposed effective date for the amended dwelling, commercial, and mobile home policies; the two amended endorsements (Form No. TWIA-431 and Form No. TWIA-432); the new endorsement (Form No. TWIA-200); and the updates to the rules manual from March 1, 2008 to April 1, 2008. This change does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

HOW THE SECTIONS WILL FUNCTION. Amended §5.4101 adopts by reference, effective April 1, 2008, modifications to existing TWIA Dwelling and Commercial Policies to incorporate in each existing policy a clarified flood exclusion clause, a clarified deductible clause, and a lengthier disclosure of Insurance Code appeal procedures; to update in each existing policy a reference to the Government Code Chapter 418; and to provide Insurance Code references in each existing policy conforming to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. An additional modification to the existing TWIA Commercial Policy is also adopted to use a new value for a hypothetical commercial deductible, taken from the range of commercial deductibles adopted in Commissioner's Order No. 06-1110, in two examples in the policy form illustrating the effect of coinsurance on coverage.

Amended §5.4201(3) deletes existing subparagraph (D) because subparagraph (D) adopts by reference commercial endorsement Form No. TWIA-65, Large Deductible Endorsement. This endorsement is deleted because it was made obsolete by Commissioner's Order No. 06-1110 adopting new commercial deductible options. Amended §5.4201(3) redesignates existing subparagraphs (E) - (K) as subparagraphs (D) - (J) because of the deletion of existing subparagraph (D). Amended §5.4201(3)(J) and amended §5.4201(4)(H) adopt

by reference, effective April 1, 2008, modifications to two existing endorsements, Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling), respectively, to conform the Insurance Code references in the endorsements to the non-substantive Code revision enacted by the 79th Legislature in HB 2017.

Amended §5.4201 combines two separate redundant paragraphs (existing §5.4201(4) and (5)) into a single paragraph, §5.4201(4). Subparagraphs (A) - (H) of amended §5.4201(4) remain designated as in existing text, but existing subparagraphs (A) - (H) of §5.4201(5) are redesignated as subparagraphs (I) - (P) of amended §5.4201(4). Existing §5.4201(6) is renumbered as amended §5.4201(5) because of the deletion of existing §5.4201(5).

Amended §5.4201(4)(Q) adopts by reference a new endorsement for the TWIA Dwelling Policy, Form No. TWIA-200, Adjusted Building Cost Endorsement, effective April 1, 2008. This endorsement provides for an annual increase in the dwelling limit of liability by a percentage determined from a building cost index to be designated by TWIA.

Amended §5.4401 adopts by reference, effective April 1, 2008, modifications to the existing Texas Special Mobile Windstorm and Hail Insurance Policy, incorporating in the policy a clarified flood exclusion clause, a lengthier disclosure of Insurance Code appeal procedures, and an updated reference to Government Code Chapter 418; conforming Insurance Code references in the existing policy to the non-substantive Code revision enacted by the 79th Legislature in HB 2017; and replacing an obsolete reference in the policy to the Board of Insurance with the Texas Department of Insurance.

Amended §5.4501 adopts by reference, effective April 1, 2008, updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits adopted by Commissioner's Order No. 06-1110 and deletes obsolete options and associated credits; clarifies that commercial deductibles apply on a per item per occurrence basis; indicates the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage determined from a building cost index to be designated by TWIA; and designates as unavailable an obsolete Commercial Policy endorsement. Non-substantive changes in Rules Manual Section II are also made to the lettered and numbered designations of endorsements listed after new subparagraphs A.2.a.(11) and A.2.c.(11). A typographical error occurring in the second sentence of amended §5.4501 is corrected by replacing the existing word manuals with the word manual.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

DIVISION 3. POLICY FORMS

28 TAC §5.4101

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code §2210.351(c) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code §2210.351(b) requires that proposed policy and endorsement forms be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans and each modification of those items that TWIA proposes to use. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4101. TWIA Dwelling and Commercial Policy Forms.

The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy and the Texas Windstorm Insurance Association Commercial Policy as amended effective April 1, 2008. Specimen copies of these policy forms are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801338
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 26, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-6327

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DIVISION 4. ENDORSEMENTS

28 TAC §5.4201

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code §2210.351(c) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code §2210.351(b) requires that proposed policy and endorsement forms be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans and each modification of those items that TWIA proposes to use. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4201. Endorsements for Use with TWIA Policy Forms.

The Texas Department of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance,

333 Guadalupe Street, Austin, Texas 78701. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.

(2) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy and the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-12, Assignment of Interest or Change in Mortgagee or Trustee, effective June 15, 1999.

(B) Form No. TWIA-23, Cancellation Report, effective June 15, 1999.

(C) Form No. TWIA-77, General Change Endorsement, effective June 15, 1999.

(D) Form No. TWIA-112, Loss Payable Clause, effective June 15, 1999.

(E) Form No. TWIA-113, Lost Policy Voucher, effective June 15, 1999.

(F) Form No. TWIA-130, Mortgage Clause (Without Contribution), effective June 15, 1999.

(G) Form No. TWIA-151A, Premium Assignment Clause, effective June 15, 1999.

(H) Form No. TWIA-175, Sale Contract Clause, effective June 15, 1999.

(I) Form No. TWIA-195, Sworn Statement in Proof of Loss, effective June 15, 1999.

(3) Endorsements for use with the TWIA Commercial Policy.

(A) Form No. TWIA-18, Builders Risk--Stated Value Form, effective June 15, 1999.

(B) Form No. TWIA-21, Builders Risk--Actual Completed Value Form, effective June 15, 1999.

(C) Form No. TWIA-26, Church Form, effective June 15, 1999.

(D) Form No. TWIA-115, Lumber Form--Specific--Retail Yard, effective June 15, 1999.

(E) Form No. TWIA-164, Replacement Cost Endorsement, effective June 15, 1999.

(F) Form No. TWIA-176, School Form, effective June 15, 1999.

(G) Form No. TWIA-280, Condominium Property Form--Additional Policy Provisions, effective June 15, 1999.

(H) Form No. TWIA-282, Condominium Property Form--Additional Property Provisions, amended June 15, 1999.

(I) Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

(J) Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) effective April 1, 2008.

(4) Endorsements for use with the TWIA Dwelling Policy.

(A) Form No. TWIA-310, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-315, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-320, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-325, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-326, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-328, Extensions of Coverage, amended June 15, 1999.

(G) Form No. TWIA-410, Conversion to Farm and Ranch Dwelling Policy, effective June 15, 1999.

(H) Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling), effective April 1, 2008.

(I) Form No. TWIA-330, Extensions of Coverage, amended June 15, 1999.

(J) Form No. TWIA-335, Extensions of Coverage, amended June 15, 1999.

(K) Form No. TWIA-340, Extensions of Coverage, amended June 15, 1999.

(L) Form No. TWIA-345, Extensions of Coverage, amended June 15, 1999.

(M) Form No. TWIA-350, Extensions of Coverage, amended June 15, 1999.

(N) Form No. TWIA-365, Replacement Cost Endorsement--Personal Property, amended June 15, 1999.

(O) Form No. TWIA-400, Actual Cash Value--Roofs (One or Two Family Dwellings), effective June 15, 1999.

(P) Form No. TWIA-420, Exclusion of Cosmetic Damage to Roof Coverings Caused by Hail, effective June 15, 1999.

(Q) Form No. TWIA-200, Adjusted Building Cost Endorsement, effective April 1, 2008.

(5) Endorsements for use with the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-29, Mandatory Endorsement, amended June 15, 1999.

(B) Form No. TWIA-570, Mobile Home Percentage Deductible Clause (Coastal Area), amended June 15, 1999.

(C) Form No. TWIA-575, Mobile Home Percentage Deductible Clause (Beach Area), amended June 15, 1999.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801339
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 26, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-6327

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DIVISION 5. TEXAS SPECIAL MOBILE HOME WINDSTORM AND HAIL INSURANCE POLICY

28 TAC §5.4401

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code §2210.351(c) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code §2210.351(b) requires that proposed policy and endorsement forms be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans and each modification of those items that TWIA proposes to use. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage.

The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage as amended effective April 1, 2008. Specimen copies of this policy are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801340
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 26, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC §5.4501

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code §2210.351(c) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code §2210.351(b) requires that proposed policy and endorsement forms be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans and each modification of those items that TWIA proposes to use. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective April 1, 2008. A specimen copy of the rules manual is available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2008.

TRD-200801341
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 26, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-6327

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CHAPTER 10. WORKERS' COMPENSATION HEALTH CARE NETWORKS
SUBCHAPTER H. EXAMINATIONS

28 TAC §10.200

The Commissioner of Insurance adopts new §10.200, concerning Fee for Examination of a Certified Workers' Compensation Health Care Network. The new section is adopted without changes to the proposed text published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9920).

REASONED JUSTIFICATION. The new section is necessary to implement SB 1253, 80th Legislature, Regular Session. SB 1253 amended Insurance Code §1305.251 to require a certified workers' compensation health care network (network) to pay a fee for Department examinations conducted under §1305.251 (relating to examination of networks) or §1305.252 (relating to general standards for retrospective review) in an amount set by the Commissioner and in accordance with rules adopted by the Commissioner. Pursuant to §1305.252(c), the fee is to be paid for the expenses of an examination that are incurred by the Commissioner or under the Commissioner's authority and that are directly attributable to that examination, including the actual salaries and expenses of the examiners directly attributable to that examination. Additionally, the new section is necessary to establish matters the Commissioner will consider to determine the amount of the fee to be paid by a network for the expense of an examination conducted under Insurance Code §1305.251 or §1305.252, and the new section is necessary to specify the time in which such a fee must be paid.

HOW THE SECTION WILL FUNCTION. Adopted §10.200(a) provides that in accordance with Insurance Code §1305.251, a network shall pay to the Department an examination fee for expenses directly attributable to an examination of the network conducted pursuant to Insurance Code §1305.251 or §1305.252. Adopted §10.200(b) specifies that the examination fee shall consist of the actual salary and expenses of the examiners directly attributable to the examination. Adopted §10.200(b)(1) describes how to calculate the part of an examiner's salary included in the examination fee, and adopted §10.200(b)(2) describes the expenses included in the examination fee.

Adopted §10.200(c) requires that an examination fee paid pursuant to the section be payable and due to the Texas Department of Insurance, P.O. Box 149104, Mail Code 108-3A, Austin, Texas 78714-9104, no later than 30 days from the invoice date.

SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code §§1305.251, 1305.007, and 36.001. Section 1305.251 requires a certified workers' compensation health care network to pay a fee to the Department, in an amount set by the Commissioner and in accordance with rules adopted by the Commissioner, for the expenses of an examination conducted under §1305.251 or §1305.252 that are incurred by the Commissioner or under the Commissioner's authority and are directly attributable to that examination, including the actual salaries and expenses of the examiners directly attributable to that examination, as determined under rules adopted by the Commissioner. Section 1305.007 provides that the Commissioner may adopt rules as necessary to implement Insurance Code Chapter 1305, the Workers' Compensation Health Care Networks Act. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2008.

TRD-200801322
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 25, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.17

The Texas Parks and Wildlife Commission adopts an amendment to §53.17, concerning Miscellaneous Fees, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9543).

Section 41 of House Bill 12, enacted by the 80th Texas Legislature, amended the Texas Parks and Wildlife Code by adding new Subchapter V to Chapter 43. The provisions of House Bill 12 require the commission by rule to establish permits to allow the possession or transport of live nonindigenous venomous snakes and five named species of constrictors for commercial and recreational purposes, and authorize the commission to adopt rules to implement the new subchapter, including rules governing fees.

The amendment establishes a fee of $20 for a recreational exotic snake permit and a fee of $60 for a commercial exotic snake permit. The fees are intended to recover the cost to the department of administering and enforcing the controlled exotic snake permit program.

A separate notice of adoption published elsewhere in this issue of the *Texas Register* establishes the recreational exotic snake permit and the commercial exotic snake permit and sets forth the requirements for possession, use, and display of the permits.

The amendment will function by establishing a fee of $20 for a recreational exotic snake permit and a fee of $60 for a commercial exotic snake permit.

The department received two comments opposing adoption of the proposed amendment. One of the commenters stated a specific rationale or reasoning for opposing adoption. The commenter stated that the fees should be higher, high enough to discourage people from owning dangerous snakes. The department disagrees with the comment and responds that House Bill 12 requires the department to establish permits for the recreational and commercial possession of controlled exotic snakes, but does not direct the department to discourage the possession of such snakes. No changes were made as a result of the comment.

The department received two comments supporting adoption of the proposed amendment.

The Texas Wildlife Association commented in support of adoption of the proposed amendment

The amendment is adopted under the provisions of House Bill 12, §41, enacted by the 80th Texas Legislature, which added new Subchapter V to Parks and Wildlife Code, Chapter 43, authorizing the commission to adopt rules to implement the subchapter, including rules governing the possession or transport of a snake covered by this subchapter; permit application forms, fees, and procedures; the release of snakes; reports that the department may require a permit holder to submit to the department; and other matters the commission considers necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801279

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 23, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 389-4775

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER J. CONTROLLED EXOTIC SNAKES

31 TAC §§55.651 - 55.657

The Texas Parks and Wildlife Commission adopts new §§55.651 - 55.657, concerning Controlled Exotic Snakes. Section 55.652 and §55.657 are adopted with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9543). Section 55.651 and §§55.653 - 55.656 are adopted without change and will not be republished.

The change to §55.652, concerning Permit Required, adds new subsections (c) and (d) to allow common carriers to use a bill of lading as a temporary permit when transporting controlled exotic snakes to or through Texas. The change is necessary because the department does not intend for the rules to require that a permit be obtained for incidental possession by commercial carriers.

The change to §55.657, concerning Violations and Penalties, adds a new subsection (c) to clarify that the provisions of Parks and Wildlife Code, Chapter 43, Subchapter V, and the new rules may be enforced by any Texas peace officer.

Section 41 of House Bill 12, enacted by the 80th Texas Legislature, amended the Texas Parks and Wildlife Code by adding new Subchapter V to Chapter 43. The provisions of House Bill 12 require the commission by rule to establish permits to govern the possession or transport of live non-indigenous venomous snakes and five named species of constrictors for commercial and recreational purposes.

New §55.651, concerning Definitions, establishes the meanings of various words and terms used in the subchapter.

New §55.651(1) creates a definition for "commercial possession." House Bill 12 requires the department to establish both recreational and commercial permits. The rules prohibit the sale of a controlled exotic snake by any person other than the holder of a commercial controlled exotic snake permit. By defining "commercial possession" as "the possession of a controlled exotic snake for a commercial purpose," the rules can be enforced based on a person's intent to sell as well as on a consummated sale.

New §55.651(2) creates a definition for "controlled exotic snake." Although the snakes affected by the rules are specifically identified by statute, it is awkward to refer to "venomous non-indigenous snakes and five species of constrictors" throughout the rules. Therefore, the department has created a collective term, "controlled exotic snake," for the sake of convenience. The definition includes all hybrids of the listed species.

New §55.651(3) defines "possession" as "actual care, custody, or control," which is taken from the definition provided by Texas Penal Code, §1.07. The definition is necessary to establish an unambiguous term for purposes of compliance and enforcement.

New §55.651(4) defines "recreational possession" as possession for any purpose other than sale. House Bill 12 requires the department to establish both recreational and commercial permits. The rules, therefore, prohibit the sale of a controlled exotic snake by any person other than the holder of a commercial controlled exotic snake permit. Thus, any purpose or intent other than sale is considered to be a recreational purpose.

New §55.651(5) defines "sale" as the "transfer of ownership or the right of possession or the offer to transfer ownership or the right of possession of a controlled exotic snake to a person for a monetary consideration." A precise definition for "sale" is necessary to unambiguously identify the characteristics of an activity (sale) for which a specific permit is required.

New §55.652, concerning Permit Required, requires a person who possesses a controlled exotic snake to possess a recreational controlled exotic snake permit; requires a person who sells a controlled exotic snake to possess a commercial controlled exotic snake permit; clarifies that possession of a permit does not relieve any person from the obligation to comply with other applicable federal, state, or local law; and cites the statutory list of persons exempted from the rules. House Bill 12 required the department to create both a commercial and a recreational permit; however, there is no statutory guidance as to the specific activities that constitute commercial or recreational use; thus, those activities must be established by rule. The new section is necessary to describe and identify the activities for which a commercial controlled exotic snake permit is required.

New §55.653, concerning Permit Issuance and Period of Validity, requires the payment of a fee for the issuance of a controlled exotic snake permit, establishes a one-year period of validity for each type of permit, provides for a receipt or bill of sale to function as a temporary recreational controlled exotic snake permit for a period of 21 days from the date indicated on the receipt or bill of sale, and includes the statutory provision that a person convicted of a violation of the subchapter may not obtain a permit before the fifth anniversary of the date of the conviction. Since the department must recoup the expense of administering the program, a fee is necessary and must be established by rule. A separate notice of adoption published elsewhere in this issue of the *Texas Register* would implement the fees for the recreational exotic snake permit and the commercial exotic snake permit. A one-year period of validity was selected because most permits and licenses sold or issued by the department are one-year permits synchronized with the state fiscal year, which allows internal accounting and auditing processes to accurately capture license and permit data on an annualized basis. The provision for the use of a receipt or bill of sale as a temporary recreational controlled exotic snake permit is necessary because the department does not wish to inconvenience the public by requiring the possession of a department-issued permit prior to the purchase of a controlled exotic snake for recreational purposes. Allowing the use of a bill of sale or receipt as a temporary recreational controlled exotic snake permit will allow people to legally possess a controlled exotic snake for recreational purposes for a limited period of time until it is convenient to purchase a department-issued permit.

New §55.654, concerning Possession of Commercial Permit, establishes the requirements for the possession and display of a commercial controlled exotic snake permit. New §55.654(a) requires a commercial controlled exotic snake permit to be purchased for each permanent place of business where controlled exotic snakes are bought, sold, or possessed for sale. The new

subsection is necessary because the department by policy has always issued permits to named individuals to facilitate enforcement. The department understands that a single company may operate a business in several locations and that requiring each employee to possess a permit would be burdensome. Therefore, the department reasons that requiring a permit for each place of business would provide a method for easily determining if activities at a given location are lawful without imposing an unreasonable burden on businesses.

New §55.654(b) authorizes an employee of a commercial controlled exotic snake permit holder to buy and sell controlled exotic snakes under the authority of that permit only at a permanent place of business operated by the permittee, provided that the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter. The provision is necessary to allow an employee without a permit to engage in regulated activities at a named location, thus allowing businesses to avoid the expense of having to purchase a commercial controlled exotic snake permit for every employee who engages in the sale of controlled exotic snake as a work duty.

New §55.654(c) allows a commercial controlled exotic snake permit holder to buy and sell controlled exotic snakes at a place other than a permanent place of business, provided the person also possesses on their person the original or a legible photocopy of a valid commercial controlled exotic snake permit. The new subsection is necessary to allow for a permit holder to engage in buying and selling on a mobile basis.

New §55.655, concerning Recordkeeping, requires the holder of a commercial controlled exotic snake permit to maintain a daily record of all purchases, sales, and transfers of controlled exotic snakes. The daily record consists of the name, address, and, if applicable, permit number of all persons from whom controlled exotic snakes are obtained or to whom controlled exotic snakes are sold. The permittee also is required to retain such records for a period of two years and to make them available at the request of any department employee acting within the scope of official duties. The two-year record retention period was selected because that is the statute of limitations for a Class C misdemeanor, which is the statutory penalty for violations of the subchapter. The new section is necessary to enable the department to track the purchase and sales activity of persons in the event that an investigation of a commercial controlled exotic snake permit holder is necessary.

New §55.656, concerning Inspection; Seizure, reiterates the provisions of House Bill 12 that establish the department's inspection authority with respect to enforcing the subchapter and the provisions applicable to the seizure and removal of unlawfully possessed controlled exotic snakes. The provisions are repeated verbatim from Parks and Wildlife Code, §43.852 - 43.854, as added by House Bill 12. Subsection (a) provides that an authorized department employee may inspect at any time and without a warrant a permit or any records required by this subchapter. Subsection (b) authorizes the department to arrange for the seizure and removal of a controlled exotic snake from a person who possesses the snake without the required permit. The person is responsible for any costs incurred by the department in the seizure, removal, and disposition of the snake. The subsection also stipulates that no department employee is required to handle, remove, or dispose of the snake and authorizes the department to contract with a person who has knowledge of or expertise in the handling of a snake covered by this subchapter to assist the department in the handling, removal, and disposition of the snake.

New §55.657, concerning Violations and Penalties, adopts the statutory language regarding violations for the release of a controlled exotic snake, prescribes the penalty for a violation of the subchapter, and creates a defense to prosecution. Under the terms of House Bill 12, a violation of Parks and Wildlife Code, Chapter 43, Subchapter V, or a rule adopted by the commission under authority of Chapter 43, Subchapter V, is a Class C misdemeanor, except for the release of a controlled exotic snake, which is a Class A misdemeanor. The new section also provides that it is a defense to prosecution that a person charged with being unable to present an appropriate permit produces in court an appropriate permit issued to the person and valid at the time the offense was committed. The rule is necessary because it is conceivable that there could be an instance in which a person who is licensed to possess a controlled exotic snake might not be in physical possession of the permit.

The department received 26 comments opposing the adoption of the proposed rules. Of those comments, 25 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption of the rules and stated that the rules were pointless. The agency disagrees with the comment and responds that House Bill 12 required the department to establish rules regarding the permits addressed in the rules. The point of the rules is to regulate persons who possess or sell controlled exotic snakes. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the department did not comply with the legislative intent of House Bill 12 because the rules apply to venomous snakes that are not indigenous to Texas, while the statute applies to venomous snakes not indigenous to United States. The department disagrees with the comment and responds that, although House Bill 12 does not define the term "indigenous," it does delegate rulemaking authority to the commission, including authority to adopt rules on "matters the commission considers necessary." The rules as adopted define a venomous snake to be non-indigenous if it is not native to the state of Texas. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the rules were an improper implementation of House Bill 12 because they were adopted "in violation of §2001.001." The commenter cited the text of Government Code, §2001.001, and stated that House Bill 12 was unethical because House Bill 1309, which had contained similar statutory language, had died in committee and much of the statutory language was added to House Bill 12. Because of that, in the commenter's view, the rules violated "§2001.001." The department disagrees with the comment and responds that, although House Bill 1309 was not passed by the 80th Texas Legislature, House Bill 12 was passed. House Bill 12 required and authorized the commission to adopt rules regarding controlled exotic snakes. In addition, Government Code, Chapter 2001, applies only to rulemaking activities by state agencies and does not apply to the legislative process. The department also responds that the rules were proposed and adopted in full compliance with all applicable provisions of state law. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that there is no reason to change something that is working, that the snakes affected by the rules are not bad and that more people are killed by dogs each year than by reptiles. The department disagrees with the comment and responds that House Bill 12 directs the department to adopt rules to require persons who possess or sell certain snakes to obtain a permit to do so. The requirements of House Bill 12 cannot be altered or eliminated by the commission. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should gather more information. The commenter stated that the rules will result in an enforcement nightmare and will cause ordinary people to become criminals. The department disagrees with the comment and responds that House Bill 12 directs the department to adopt rules by April 1, 2008 to require persons who possess or sell certain snakes to obtain a permit to do so, which the department has done. The department notes that House Bill 12, §54, requires the formation of an interim legislative committee to study the issue and report its findings to the legislature and the governor by November 1, 2008. The department also notes that there will be a significant effort to inform the public and all persons who may be involved in buying and selling controlled exotic snakes of the existence of the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the passage of House Bill 12 was unethical; that the cost of the permits will not provide enough public benefit to warrant the time and cost; and that people affected by the proposed rules will go underground to avoid having to purchase a permit. The department disagrees with the comment and responds that House Bill 12, as enacted by the 80th Texas Legislature, requires and authorizes the commission to establish rules regarding controlled exotic snakes. The department also responds that the department has attempted to establish fees sufficient to recoup the cost of administering and enforcing the rules, and will adjust the fees if necessary. The department further responds that persons who choose not to purchase a permit will be in violation of the law and at risk of citation, prosecution, and punishment. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that there should be an additional class of permit for persons who own multiple snakes but who are not engaged in commercial activities. The department disagrees with the comment and responds that an additional class of permit is unnecessary. A person who has purchased a recreational controlled exotic snake permit may purchase or possess as many controlled exotic snakes as the person wishes, provided the person does not engage in a commercial activity. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that it was just another way for the government to make money off of people who enjoy snakes, that people pay a lot of money for snakes and will not release them, that dogs kill more people than snakes do, and that the rules are discriminatory and un-American. The department disagrees with the comment and responds that the rules as adopted include those fees considered necessary only for the department to recoup the costs of discharging the directives of House Bill 12, which requires persons who possess or sell certain snakes to obtain a permit to do so from the department. The department also responds that the requirements of House Bill 12, including the creation of an offense for the release of a controlled exotic snake, cannot be altered or eliminated by the commission. The department further responds that the rules do not unlawfully discriminate against any group or individual. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules and stated that the rules were one more step towards the loss of freedom. The department disagrees with the comment and responds that nothing in the rules prohibits the possession, purchase, or sale of controlled exotic snakes, so long as the person in possession has obtained the appropriate permit. No changes were made as a result of the comments.

One commenter opposed adoption of the rules and stated that it was just one more way for the state to take money from the public, that the state will seize snakes and "give them to their friends," and that Texas would lose significant revenues generated by reptile exhibitions. The department disagrees with the comment and responds that the rules as adopted include those fees considered necessary only for the department to recoup the costs of discharging the directives of House Bill 12; that the department will follow the law in disposing of any snakes seized by the department; and that, since the rules do not prohibit the possession, sale, or purchase of controlled exotic snakes (so long as the person in possession has obtained the appropriate permit), there should not be any resultant economic impacts from the rules' effect on reptile exhibitions, other than the cost of the permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the government was going to a lot of time and effort to outlaw pets and that cornsnakes did not harm people or the environment. The department disagrees with the comment and responds that the rules as adopted do not prohibit any person from possessing a controlled exotic snake and that the rules do not apply to cornsnakes, which are non-venomous. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the recordkeeping requirements were unnecessary and that permits should be valid for five years instead of one. The department disagrees with the comment and responds that the recordkeeping requirements are necessary for the department to ensure compliance and to gather data to present to the interim legislative committee that is studying the issue. The department chose a one-year period of validity for permits because many of the snakes affected by the rules are owned by children and adolescents who would be unable to afford the fee for a five-year permit.

One commenter opposed adoption and stated that there were more important issues to worry about. The department disagrees with the comment and responds that the rules were required and authorized by House Bill 12. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no one should have to have a permit to own a snake. The department disagrees with the comment and responds that, under the provisions of House Bill 12, a person who possesses a controlled exotic snake must have a permit issued by the department. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the rules will not, as the department stated in the proposal preamble, result in the enhanced health and safety of the public; is a waste of time and money; and should not be administered by the department because the regulated animals are non-in-

digenous. The department disagrees with the comment and responds that the legislative intent of House Bill 12, §41, is to provide for greater public health and safety. The department reiterated that intent in the proposed rulemaking. The department also responds that the rules are required by statute and that the commission has no authority to delay or stop their implementation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the law was based upon extreme prejudice toward reptile owners, enthusiasts, breeders, retailers, and the animals themselves. The department disagrees with the comment and responds that the statute, as enacted by the legislature, requires the department to adopt rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that husbandry of venomous snakes is relatively safe. The commenter also stated that House Bill 12 restricts liberties, creates bureaucracy and provides no benefit to the public health. The department disagrees with the comment and responds that House Bill 12 directs the department to create and administer a permit program regarding controlled exotic snakes. The rules accomplish that directive. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the definition of "commercial" is more restrictive than it appears to be. The commenter stated that captive-breeding activities or the simple possession of a breeding pair of snakes could be viewed as a commercial activity, and that captive breeding operations would have to purchase a commercial controlled exotic snake permit even if breeding operations were not fruitful. The department disagrees with the comment and responds that the definition of "commercial possession" is clear and unambiguous; a person who engages in the sale or offering for sale of controlled exotic snakes is engaged in commercial possession. All other uses are recreational purposes. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that as written, they could be used by the department to revoke permits for up to five years on technical violations of permit and recordkeeping requirements. The department disagrees with the comment. The provision in question is a statutory provision that cannot be modified or eliminated by the commission. Nevertheless, the recordkeeping requirements of the new rules are not believed to be onerous or difficult to comply with; however, commercial permit holders are required to maintain accurate records; and the department encourages all persons to comply with the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that liberties will suffer if permits are made prohibitively difficult to obtain. The department disagrees with the comment and responds that permits can be purchased for an affordable fee wherever hunting and fishing licenses are sold. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that there was no provision in the rules for a recreational controlled exotic snake permit holder to sell an animal at a later date without obtaining a commercial permit. The department acknowledges that a person who sells a controlled exotic snake must have a commercial permit and responds that the rules are unambiguous: if a person engages or intends to engage in a commercial activity, that person must obtain a commercial controlled exotic snake permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that most of the people that keep controlled exotic snakes are hobbyists, not businesses, and may only have two or three animals but may sell them amongst friends at some point in their life. The commenter stated that the rules make all transactions commercial and thus don't provide hobbyists with a way to divest themselves of unwanted animals. The department disagrees with the comment and responds that House Bill 12 requires the department to establish separate permits for recreational and commercial possession of controlled exotic snakes. The department decided to employ a "bright line" in determining what qualifies as a commercial activity. By defining a commercial activity as the possession of a controlled exotic snake for purpose of sale, the department created an easily enforceable provision that would not involve having to determine if any given sale constituted sale by a hobbyist or sale by a business. The department also responds that snakes can be given away, or the person can simply purchase a commercial controlled exotic snake permit and sell the snakes. No changes were made as a result of the comments.

One commenter opposed adoption of the rule and stated that it wasn't right to require a commercial permit holder to also hold a recreational permit as well. The department agrees with the comment and responds that the rules do not require a commercial permit holder to also hold a recreational permit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has no legitimate interest in knowing the identities of out-of-state sellers and buyers and that the recordkeeping requirements of the rules, therefore, interfere with interstate commerce. The department disagrees with the comment and responds that it is important to determine that controlled exotic snakes possessed in Texas have been lawfully obtained and/or sold within the state. The identities of buyers and sellers are, therefore, crucial in ensuring compliance and conducting investigations of alleged violations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that data from permit holders should not be accessible under the Texas Public Information Act because it could "contain sensitive competitive business data as well as information on individuals that may be covered by federal privacy laws." The department disagrees with the comment. There are no reporting requirements under the rule that would provide the department with any "sensitive competitive business data." The rules only require that permit holders maintain certain records at their place of business. In addition, personal information regarding recreational permit holders, including name, address, telephone number, social security number, or driver's license number is confidential under Parks and Wildlife Code, §11.030, and department rules. Commercial permit holders have the option to elect to keep their personal information confidential as well. In the event that a commercial permittee provides commercial information to the department, the permittee should clearly label the information as confidential and must be willing to submit arguments to the Office of the Attorney General about why the information is confidential (Government Code, §552.305).

The department received eight comments supporting adoption of the rules as proposed.

The Texas Wildlife Association commented in support of adoption of the proposed rules.

The new sections are adopted under the provisions of House Bill 12, §41, enacted by the 80th Texas Legislature, which added new Subchapter V to Parks and Wildlife Code, Chapter 43. Section 43.851 requires the commission to adopt rules regarding permitting of controlled exotic snakes and to establish separate rules for commercial and recreational activity regarding exotic snakes. Section 43.855 authorizes the commission to adopt rules to implement the subchapter, including rules governing the possession or transport of a snake covered by this subchapter; permit application forms, fees, and procedures; the release of snakes; reports that the department may require a permit holder to submit to the department; and other matters the commission considers necessary.

§55.652. Permit Required.

(a) Except as provided by Parks and Wildlife Code, §43.851(c), it is an offense for any person in this state to:

(1) possess a controlled exotic snake for any purpose other than sale unless that person possesses a valid recreational controlled exotic snake permit issued by the department; or

(2) sell or possess for commercial purposes a controlled exotic snake unless that person possesses a valid commercial controlled exotic snake permit issued by the department.

(b) A permit issued under this subchapter does not relieve any person of the responsibility of complying with any federal, state, or local law or ordinance regulating the possession and transportation of controlled exotic snakes.

(c) For controlled exotic snakes imported to Texas by common carrier, a bill of lading shall function as a temporary permit until the controlled exotic snakes are received by the consigner indicated on the manifest.

(d) For controlled exotic snakes transported through Texas by common carrier, a bill of lading shall function as a temporary permit during transit.

§55.657. Violations and Penalties.

(a) A person may not intentionally, knowingly, recklessly, or with criminal negligence release or allow the release from captivity of a snake covered by this subchapter.

(b) A person who violates any provision of the subchapter is subject to the penalties prescribed by Parks and Wildlife Code, §43.856.

(c) The provisions of Parks and Wildlife Code, Chapter 43, Subchapter V and this subchapter may be enforced by any Texas peace officer.

(d) It is a defense to prosecution under §55.652 of this title (relating to Permit Required) that the person charged produces in court an appropriate permit issued to the person and valid when the offense was committed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801280

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 23, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 389-4775

CHAPTER 57. FISHERIES
SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.251, §57.252

The Texas Parks and Wildlife Commission adopts amendments to §57.251 and §57.252, concerning Introduction of Fish, Shellfish and Aquatic Plants, without change to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9550).

Parks and Wildlife Code, §12.015, requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters. Additionally, Agriculture Code, Chapter 134, requires the department to adopt rules to carry out its duties under that chapter.

The department's statutory responsibility is to protect the health and viability of native populations of fish, shellfish, and aquatic life in state waters, including endangered species. Although offshore aquaculture is being practiced elsewhere in the world, it is in its infancy in the United States in general and the Gulf of Mexico in particular. At the present time, there are no offshore aquaculture operations permitted or in the process of being permitted by the department.

In November of 2006, the Texas Parks and Wildlife Commission adopted rules to govern offshore aquaculture activities in Texas waters. As adopted, the rules created a definition for "outside waters." Although the adoption preamble noted that the definition was necessary to "identify the broad geographical area in which offshore aquaculture operations are lawful," the rule text did not reflect the commission's intent to restrict offshore aquaculture to outside waters. Additionally, the department is concerned that the use of the term "outside waters" is potentially confusing, since the same term is used in the department's regulations governing the shrimp fishery. Therefore, the amendment to §57.251 replaces the term "outside waters" with the term "offshore aquaculture zone" (OAZ) and simplifies the definition for clarity's sake.

The amendment to §57.252 clarifies that the department will not issue an offshore aquaculture permit for a facility that is not located in the offshore aquaculture zone, and removes the stipulation that offshore aquaculture activities be confined to Outer Continental Shelf Blocks. Previously, §57.252(b) stated that aquaculture permits would authorize activities in specific Outer Continental Shelf Blocks (OCSB). In developing the original rule, the department had been under the impression that the OCSB grid system also applied to state waters, which it does not. The block system carries into state waters, but it does not carry the same naming convention. Therefore, the amendment removes the reference to OCSBs and simply restricts permitted activities to the

offshore aquaculture zone, which is defined in §57.251 as discussed previously in this preamble.

The department's intent in restricting prospective offshore aquaculture operations to the OAZ is to minimize risk exposure to sensitive bay, river, and inshore ecosystems from potential negative impacts of aquaculture operations offshore.

There is scientific concern over a number of issues raised by aquaculture operations, such as genetic dilution of wild stocks; invasive species vectors; epidemiological and disease issues; impacts of escapement by species that could cause significant environmental harm; habitat destruction; and water diversions that could disrupt aquatic ecosystems, water quality, habitat, and species diversity.

Aquaculture operations are by necessity energy-intensive animal feeding areas. These areas can produce large, concentrated amounts of wastes underneath and around fish cages, and plumes of nutrients and waste can be transported by wind, tides, currents, and boat traffic. Similarly, the chemicals and antibiotics used in fish farming could have effects when discharged directly into open waters; and fish contamination could occur from consumption of fish meal.

The ecology of Texas' inshore hydrology is characterized by shallow water depth, slow water exchange, and seasonal freshwater inflows. This area of the state is important nursery habitat for estuarine fisheries, a major source of organic biomass for coastal food webs, a critical factor in stabilizing coastal erosion and sedimentation, and the arena in which many major nutrient cycling and water quality processes occur. Therefore, the department seeks to restrict aquaculture operations to the open waters of the Gulf of Mexico until such time as the ecological impacts can be definitively understood.

The amendments as adopted will function by establishing unambiguous meanings for words and terms used in the subchapter, and by specifically identifying the geographical area where offshore aquaculture activities could be permitted.

The department received no comments opposing adoption of the proposed amendments.

The department received four comments supporting adoption of the proposed amendments.

No groups or associations commented on the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801281

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 23, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission adopts the repeal of §65.607 and amendments to §§65.601 - 65.605, 65.608, and 65.610 - 65.612, concerning the Deer Breeder Permits. Section 65.604 is adopted with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9269) and will be republished. The repeal of §65.607 and amendments to §§65.601 - 65.603, 65.605, 65.608, and 65.610 - 65.612 are adopted without change and will not be republished.

The change to §65.604, concerning Disease Monitoring, alters subsection (c) to replace the "and" with an "or." As worded, the provision requires that a facility meet two specific requirements in order to be eligible for the department to authorize the transfer of deer. The department's intent is that satisfaction of either of the requirements is sufficient.

The repeal and amendments are necessary to implement the requirements of House Bill 1308, enacted by the 80th Texas Legislature, which amended Parks and Wildlife Code, Chapter 43, Subchapter E, to make changes recommended by the Breeder User Group, an ad hoc group of deer breeders and to make housekeeping and clean-up type changes to improve clarity and sense.

The title of 31 TAC Chapter 65, Subchapter T, is affected by House Bill 1308, which eliminates the term "scientific breeder" and replaces it with the term "deer breeder."

The repeal of §65.607, concerning Marking of Deer, has the effect of eliminating provisions regarding the marking of deer held in captivity under a deer breeder's permit. House Bill 1308 added new Parks and Wildlife Code, §43.3561, which creates a statutory provision for identification of breeder deer. The proposed repeal is necessary to prevent conflict between the rules and their enabling statute.

House Bill 1308 made a number of changes involving terminology. Already mentioned is the change of "scientific breeder" to "deer breeder." Similarly, the amendments also replace the term "scientific breeder deer" with the term "breeder deer" throughout the subchapter. The changes are necessary to make regulatory language consistent with statutory language.

The amendment to §65.601, concerning Definitions, introduces a new definition, eliminates or alters several current definitions, and redesignates the paragraphs in the section accordingly.

The amendment to §65.601 adds a definition for "accredited test facility." Prior to this rulemaking, disease testing was done by the Texas Veterinary Medical Diagnostic Laboratories; however, the United States Department of Agriculture has certified additional laboratories to perform testing for Chronic Wasting Disease. Therefore, the amendment defines an "accredited test facility" as "any laboratory approved by the U.S. Department of Agriculture to test white-tailed deer or mule deer for Chronic

Wasting Disease" and replaces references in §65.604, concerning Disease Monitoring, as necessary.

The amendment to §65.601 eliminates the definitions for "common carrier," "deer," "propagation," and "scientific." "Deer" is now defined by statute (Parks and Wildlife Code, §43.351) and "common carrier," "propagation," and "scientific" are no longer used in the subchapter and thus are unnecessary.

The amendment to former §65.601(9), redesignated as paragraph (7), alters the definition of "sale" to include releases or deliveries for a consideration, barter, or even exchange. Prior to this rulemaking, the definition was applicable only to a transfer of possession and did not address the scenario in which a person who is not a deer breeder might purchase a breeder deer and liberate it, in which case the deer would not be possessed by the purchaser. The amendment is necessary to ensure that the rules apply to all of the various possible situations and circumstances in which breeder deer are bought and sold.

The amendment to former §65.601(12), redesignated as paragraph (9), alters the definition of "transfer permit" to reference the definition of "transfer" in Parks and Wildlife Code, §43.351(7). Parks and Wildlife Code, §43.351(7), defines "transfer" as "any movement of breeder deer from a breeder facility, a nursing facility, or a deer management permit facility other than to an accredited veterinarian for medical purposes." Prior to this rulemaking, the regulatory definition of "transfer permit" implied that a transfer permit was required for all movement of breeder deer; however, an exception in §65.610(e)(6) allows breeder deer to be moved without a transfer permit for medical treatment by a veterinarian. The amendment is necessary to make the definition of "transfer permit" accurate.

The amendment to former §65.601(13) alters the definition of "unique number" to match the description of "unique number" in Parks and Wildlife Code, §43.3561, as added by House Bill 1308.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, implements statutory terminology, replaces a reference to the Texas Administrative Code (TAC) with a reference to the Parks and Wildlife Code, and eliminates a time-dependent provision that is no longer necessary. As previously noted, House Bill 1308 made a number of changes that necessitate alterations of regulatory terminology for the sake of consistency. The amendment makes those changes where necessary throughout the section. House Bill 1308 also removed the commission's explicit rulemaking authority with respect to the marking of breeder deer. The amendment, therefore, removes a reference to 31 TAC §65.607, concerning Marking of Deer, because that section is repealed by this rulemaking. The reference is replaced with a reference to Parks and Wildlife Code, §43.3561, which prescribes marking requirements by statute. Prior to this rulemaking, §65.602(c) specified that the provisions of that subsection were to be effective until March 31, 2007. This deadline was created as part of a previous rulemaking related to disease surveillance and is no longer necessary because the deadline has passed.

The amendment to §65.603, concerning Application and Permit Issuance, alters terminology as discussed previously, eliminates the breeding plan required as part of an application for a breeder permit, eliminates the requirement that an application for a permit be notarized, clarifies a provision relating to the certification of the adequacy of prospective breeding facilities, allows the department to delay the denial of a permit renewal if the permittee is making acceptable progress towards resolving deficiencies, and rewords a provision governing the submission of site plans following facility modification.

Prior to this rulemaking, §65.603 required an applicant for a breeder permit to submit a breeding plan to the department for approval. The department has determined that the original purpose for the requirement no longer exists. When the former scientific breeder's permit was created, it was thought necessary to monitor breeding operations to determine if further specific regulations would be required. The department has determined that, in general, deer-breeding expertise has progressed beyond the experimental stage and there is no reason to continue to require the breeding plan.

The previous rule also required an applicant for a breeder permit to have the completed application notarized. Notarization is not necessary as a means to certify that the information is accurate and true to the applicant's knowledge, because the application is a government record; and falsification is, therefore, an offense under Penal Code, §37.10. Therefore, the requirement is unnecessary and is eliminated.

Prior to this rulemaking, §65.603(a)(3)(C)(i)(II), redesignated as subsection (a)(2)(A)(ii), required a statement from a certified wildlife biologist to the effect that a prospective breeding facility was "adequate to conduct the proposed activities." Because Parks and Wildlife Code, Chapter 43, Subchapter L, and the rules specify the exact activities that may be conducted under a deer breeder permit, there is no need to require a statement of proposed activities. Therefore, the provision has been reworded to require a statement from a certified wildlife biologist that the prospective deer breeding facility is adequate for the lawful conduct of activities governed by the subchapter.

Former §65.603(d) provided for the renewal of a breeder permit, provided the permittee submitted an application for renewal and was otherwise in compliance with the requirements of the subchapter; however, the rule did not explicitly state a requirement for timely renewal. Therefore, the amendment specifies that an application for a renewal must be timely filed. All deer breeder permits expire each July 1. The department notifies each permittee of pending expiration and reminds the permittee to submit a renewal application if they desire to continue deer breeding. The department considers that a renewal application is timely filed if it is received prior to the expiration of the current permit. However, the department is sympathetic to unpredictable and unexpected events that can occur; therefore, the amendment allows the department to consider the particulars of an applicant's situation in the event the applicant is unable to timely file a renewal application, with the understanding that the applicant must be making satisfactory progress towards resolution of the situation.

Prior to this rulemaking, §65.603(f) required permittees to submit an accurate diagram to the department whenever a breeder facility was "enlarged or added to." The provision was intended to apply to changes that increase the size of the facility or include physical area that was not previously part of the facility. The regulated community has commented that the current language could be misunderstood to mean that changes to the placement of pens or gates within a permitted facility would require the filing of a new diagram with the department. Therefore, the amendment requires a new diagram to be submitted to the department whenever a permittee alters "the exterior dimensions of a breeder facility, either by enlargement or reconfiguration."

The amendment to §65.604, concerning Disease Monitoring, eliminates a time-sensitive provision that is no longer necessary and identifies the effective date of a previous rulemaking. The amendment also allows for the testing of deer for Chronic Wasting Disease at any facility approved by the U.S. Department of Agriculture to perform such tests.

Prior to this rulemaking, §65.604(a) stipulated that the provisions of subsections (b) - (d) and (g) were to take effect April 1, 2007. This effective date was created in order to defer the effectiveness of those provisions until other provisions governing disease-surveillance requirements could be brought into effect. The current provision is no longer necessary because that date has passed and those requirements are now in effect.

Similarly, former §65.604(e) and (f), redesignated as subsections (d) and (e), referred to "the effective date of this subsection." The language was necessary because the department wished to defer the effectiveness of those subsections. Now that the effective date is known, the department has identified it in the rules so that interested parties will not have to search through previous rulemakings.

The amendment to §65.605, concerning Holding Facility Standards and Care of Deer, removes a reference to §65.607, concerning Marking of Deer, because that section has been repealed. The reference has been replaced with a reference to Parks and Wildlife Code, §43.3561, which prescribes marking requirements by statute. The amendment also makes changes to terminology as discussed. The amendment also removes the requirement that notification of an escaped deer be notarized. Notarization is not necessary as a means to certify that the information is accurate and true to the applicant's knowledge, because the notification application is a government record and falsification is, therefore, an offense under Penal Code, §37.10. Therefore, the current requirement is unnecessary.

The amendment to §65.608, concerning Annual Reports and Records, eliminates a provision requiring permittees to maintain documentation attesting to the source or origin of deer held by the permittee. Under the provisions of House Bill 1308, Parks and Wildlife Code, §43.359 was amended to require a deer breeder to maintain an accurate and legible record of all breeder deer acquired, purchased, propagated, sold, transferred, or disposed of and any other information required by the department that reasonably relates to the regulation of deer breeders. Additionally, House Bill 1308 amended Parks and Wildlife Code, §43.359, to require deer breeders to make any information required under Parks and Wildlife Code, Chapter 43, Subchapter L, for the previous two reporting years available to a game warden or another authorized department employee. Therefore, the provision is no longer necessary.

The amendment to §65.610, concerning Transfer of Deer, makes changes to terminology, makes references to statutory provisions, clarifies the meaning of a provision affecting permit possession, and rewords a provision for clarity.

The amendment to §65.610(c) allows the temporary possession of breeder deer by a person who is not a permitted deer breeder, provided the person possesses a valid transfer permit. Under previous rule, possession of breeder deer by unpermitted persons could only occur for purposes of release. Discussions with the Breeder User Group convinced the department that employees of deer breeders should be allowed to transport breeder deer under the authority of a transfer permit.

Under previous §65.610(d)(2), the release of buck breeder deer was prohibited during an open season and during the 10-day period immediately prior to an open season, unless the buck's antlers had been removed. House Bill 1308 provided an exception to this prohibition by allowing the transfer of antlered buck deer to another breeding facility or to a facility operated under a deer management permit. The amendment provides for the exceptions created under House Bill 1308.

Previous §65.610(d)(3) allowed a person who is not a breeder permit holder to be in possession of breeder deer under a transfer permit if the deer are being transported for purposes of release. The provision is no longer necessary because of the amendment to 65.610(c), which authorizes temporary possession of breeder deer by a person who is not a permitted deer breeder.

Previous §65.610(e)(4) was awkwardly worded. The amendment restates the provision in a clearer fashion.

The amendment to §65.611, concerning Prohibited Acts, eliminates three subsections that are no longer necessary and identifies the effective date of a previous rulemaking.

Previous §65.611(c) prohibited the possession of deer taken from the wild within a breeder facility. However, under House Bill 1308, Parks and Wildlife Code, §43.365 was amended to eliminate the offense of taking, trapping, or capturing or attempting to take, trap, or capture white-tailed deer or mule deer from the wild. Parks and Wildlife Code, §43.061, makes it an offense for any person to capture, transport, or transplant any game animal or game bird from the wild unless that person has obtained a permit to trap, transport, and transplant from the department. Additionally, the violation of under §43.061 is a Class B misdemeanor rather than a Class C misdemeanor. As a result, former subsection (c) became unnecessary.

The amendment to §65.611 also eliminates former subsection (f), which prohibits the hunting or killing of breeder deer within a breeder facility. House Bill 1308 amended Parks and Wildlife Code, §43.365, to allow for the euthanization of breeder deer for humane dispatch or disease testing and prohibits the hunting or killing of breeder deer except as provided by commission rule.

The amendment to §65.611 also eliminates former subsection (h), which prohibits the sale of breeder deer unless either the purchaser or seller possesses a permit valid for the transaction. The amendments affecting the transfer permit make the provisions of subsection (h) redundant and, therefore, unnecessary.

Previous §65.611(i), redesignated as subsection (f), states that the subsection does not apply to breeder deer possessed before the effective date of the subsection. When the rule was promulgated, the effective date of the rulemaking was not known. Now that the effective date is known, the amendment would identify that date for the sake of ease and convenience.

The amendment to §65.612, concerning Disposition of Deer, changes terminology where necessary as previously discussed.

The rules as adopted will function by implementing the requirements of House Bill 1308, enacted by the 80th Texas Legislature, which amended Parks and Wildlife Code, Chapter 43, Subchapter L; by making the rules less burdensome; and by making regulatory terminology clearer and more accurate.

The department received three comments opposing adoption of the proposed rules. Of those comments, two expressed a specific rationale or reasoning for opposing adoption. Those com-

ments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption of the proposed rules and stated that captive deer breeding should be eliminated entirely. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, requires the department to "issue a permit to a qualified person to possess live breeder deer in captivity." The commission does not have the authority to eliminate or modify that requirement. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that deer belong to the state and the only deer breeding should be done in the wild. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, requires the department to "issue a permit to a qualified person to possess live breeder deer in captivity." The commission does not have the authority to eliminate or modify that requirement. No changes were made as a result of the comment.

The department received five comments supporting adoption of the proposed rules.

The Texas Wildlife Association commented in support of adoption of the proposed rules.

SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §§65.601 - 65.605, 65.608, 65.610 - 65.612

The amendments are adopted under Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer held under Parks and Wildlife Code, Chapter 43, Subchapter L; the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; the endorsement of a deer breeder facility by a certified wildlife biologist; the number of breeder deer that a deer breeder may possess; and the dates for which a deer breeder permit is valid.

§65.604. Disease Monitoring.

(a) No person shall remove, or authorize or cause the removal of a live breeder deer from a facility permitted under this subchapter unless:

(1) the facility is designated by the department as movement qualified; or

(2) the removal is specifically authorized by the department.

(b) No person shall knowingly or intentionally allow the introduction of a live breeder deer from a facility that is not movement qualified into a facility permitted under this subchapter.

(c) The department may authorize the transfer of breeder deer from a facility that is not movement qualified or for which there is no valid deer breeder permit to a facility permitted under this subchapter; however, the receiving facility shall not allow any breeder deer to be moved from the facility for a period of one year from the date the transfer occurs.

(d) A facility permitted under this subchapter is movement qualified if no CWD test results of 'detected' have been returned from an accredited test facility for breeder deer submitted from the facility or at least one of the following criteria is satisfied:

(1) the facility is certified by the Texas Animal Health Commission (TAHC) as having a CWD Monitored Herd Status of Level A or higher;

(2) less than five eligible breeder deer mortalities have occurred within the facility as of May 23, 2006; or

(3) CWD test results of 'not detected' have been returned from an accredited test facility on a minimum of 20% of all eligible breeder deer mortalities occurring within the facility as of May 23, 2006.

(e) An eligible mortality is any lawfully possessed breeder deer aged 16 months or older that has died within a facility after May 23, 2006.

(f) A facility is no longer movement qualified if it cannot meet the requirements of subsection (d) of this section as of March 31 of any year; however, a facility may reestablish movement qualified status at any time by meeting the requirements of subsection (d) of this section.

(g) If a person receives or accepts into a facility that is movement qualified a breeder deer from a facility that is known by the person not to be a movement qualified facility, the receiving facility immediately and automatically loses movement qualified status for a period of one year from the date the transfer occurred, as determined by the department.

(h) Except as provided in this subsection, no person shall introduce into or remove deer from or allow or authorize breeder deer to be introduced into or removed from any facility for which a test result of 'detected' has been obtained from an accredited test facility. The provisions of this subsection take effect immediately upon the posting of notice by the department at the facility that a 'detected' result has been obtained and continue in effect until:

(1) the facility meets the requirements of subsection (d) of this section; and

(2) the department specifically authorizes the resumption of permitted activities at the facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801282
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 23, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 389-4775

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SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.607

The repeal is adopted under Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer held under Parks and Wildlife Code, Chapter 43, Subchapter L; the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or

shipment of breeder deer; the endorsement of a deer breeder facility by a certified wildlife biologist; the number of breeder deer that a deer breeder may possess; and the dates for which a deer breeder permit is valid.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2008.

TRD-200801283
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 23, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.834

The Comptroller of Public Accounts adopts an amendment to §3.834, concerning volunteer fire department assistance fund assessment pursuant to the Insurance Code, Chapter 2007, without changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 658). Subsection (a) is being amended to clarify the calculation of the assessment, clarify the final assessment date, and delete the definition of assessment date. Subsection (b) now sets out the formula for the calculation of the assessment. Subsection (e) is amended to stipulate that insurers may recoup the assessment from policy holders. Subsections (d), (f), and (g) are amended to correct statutory citations due to the recodification of the Insurance Code. The remaining subsections are being relettered accordingly.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The rule implements Texas Insurance Code, Chapter 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801375
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: March 30, 2008
Proposal publication date: January 25, 2008
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT
SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.35 - 31.37

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts new §§31.35 - 31.37 relating to a disability retiree's report of excess compensation earned for work during retirement and forfeiture of annuity payments due to excess compensation. The new sections are adopted in response to legislation providing for the suspension or reduction of disability retirement annuity benefits received by a TRS disability retiree based on excess compensation earned for work. The new sections are adopted without changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8426).

New §§31.35 - 31.37 are adopted in response to House Bill 2427, 80th Legislature, Regular Session (2007) ("H.B. 2427"). H.B. 2427 amended the provisions of the TRS retirement plan to authorize TRS to adopt rules relating to the suspension or reduction of disability retirement annuities based on compensation earned by a disability retiree. H.B. 2427 also requires a disability retiree whose annuity is suspended to pay an additional premium for coverage under the retirees' health benefit plan, TRS-Care, as determined by TRS as the trustee for TRS-Care, up to the total cost of coverage for the retiree and any dependents, during the period of time the annuity is suspended. To implement the payment of any additional TRS-Care premiums because of the forfeiture of disability retirement annuities under adopted new §§31.35 - 31.37, TRS also adopts amended TRS-Care rule 34 TAC §41.5 (relating to Payment of Contributions), as published elsewhere in this issue of the *Texas Register*.

Adopted new §31.35 concerns a disability retiree's report of excess compensation. The adopted new section would require a new disability retiree to report earned compensation to TRS when the annual compensation exceeds the greater of the disability retiree's highest salary in any school year before retirement or $40,000. Under the adopted rule, a report would not be required for a calendar year in which the retirement annuity payments totaled $2,000 or less. The adopted new rule would also establish administrative requirements relating to the required report, including a description of "compensation," a calendar year schedule for the filing of a report (beginning with the first full calendar year after the retiree's effective date of retirement), and a May 1 annual deadline for the report. Under new §31.35, TRS may audit the compensation report of a disability retiree by requiring the retiree to provide more information and may obtain independent information regarding earnings.

Adopted new §31.36 concerns forfeiture of disability retirement annuity payments due to excess compensation. Under the adopted new section, a disability retiree's monthly annuity payments would be forfeited if the retiree reported earned compensation in excess of the limit established under adopted new §31.35. The new section provides, however, that TRS would resume annuity payments following receipt of a new report showing that compensation had ceased or decreased sufficiently. The adopted new rule also provides for the forfeiture of disability retirement annuities if TRS were to learn that a disability retiree had failed to report compensation in excess of the limit.

Adopted new §31.37 concerns the applicability of excess compensation provisions to employment after retirement in Texas public educational institutions. Under the adopted new section, a disability retiree is subject to the reporting and forfeiture provisions if the retiree earns compensation for employment by a Texas public educational institution, regardless of whether the employment results in forfeiture of an annuity in the month of employment under existing employment after retirement rules.

No comments were received regarding the proposed new sections.

Statutory Authority: The new sections are adopted under the authority of the following sections of the Government Code: §824.310, which authorizes TRS to adopt rules relating to the suspension or reduction of disability retirement annuities based on compensation earned by a disability retiree; §824.301, which authorizes the Board to adopt rules requiring the submission to TRS of additional information about a disability; and §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2008.

TRD-200801362
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 27, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 542-6438

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.2

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.2 relating to additional enrollment opportunities under TRS-Care, the health benefits program for TRS retirees administered by TRS, as trustee. The substantive amendments, located in a new subsection (b), are adopted mainly to address special enrollment events under TRS-Care. The amended section is adopted with non-substantive changes to the formatting of the proposed text of §41.2(a), (a)(8) and (b)(1) as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8699).

The substantive amendments to §41.2, located in a new subsection (b), as noted above, are adopted mainly to address special enrollment events under TRS-Care, which have been defined by TRS rule. Pursuant to Board authorization granted in February 2007, TRS filed the appropriate documentation with the Centers for Medicare and Medicaid Services (CMS) to elect to exempt (i.e., opt out) TRS-Care from Provisions 2 and 3 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Provision 2 of HIPAA addresses special enrollment events. By opting out of this provision of HIPAA, the special enrollment events of TRS-Care are described and defined in new subsection (b) of amended §41.2, through the adoption of HIPAA standards, save and except as to listed exceptions to HIPAA contained therein. New subsection (b) of the amended rule clarifies that individuals who are already enrolled in TRS-Care may not elect a different plan upon the occurrence of a special enrollment event. Also, a TRS pension retiree who is not already enrolled in TRS-Care cannot enroll in TRS-Care as a result of a special enrollment event applicable to his dependent. Finally, in no event, as a result of a special enrollment event applicable to the dependent, may the dependent of a TRS pension retiree enroll in TRS-Care if the TRS pension retiree is not already enrolled in TRS-Care.

The non-substantive amendments to §41.2 relate to a general reorganization of this rule into three distinct and separately addressed additional enrollment opportunities: an Age 65 Additional Enrollment Opportunity addressed in §41.2(a), the above noted special enrollment event opportunity addressed in §41.2(b), and an enrollment opportunity established by TRS addressed in §41.2(c). The remaining proposed non-substantive amendments to §41.2 are proposed for purposes of clarification or to delete subsections that are no longer necessary. The technical, non-substantive change to the formatting of the proposed text as published occurs in §41.2(a): the phrase in subsection (a) referring back to the same subsection, i.e., back to itself -- "as described in subsection (a) of this section" -- is changed to read, "as described in this subsection." The change does not require republication of the amended rule for public comment.

No comments were received regarding the proposed amended section.

Statutory Authority: The amended section is adopted under the authority of §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

§41.2. Additional Enrollment Opportunities.

(a) Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").

(1) For purposes of this subsection, the term "eligible participants" means:

(A) all TRS service retirees who are enrolled in TRS-Care;

(B) dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and

(C) surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.

(2) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(3) Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after the date of their enrollment have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(4) The Age 65 Additional Enrollment Opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(5) An eligible participant who is not enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll in the next-higher TRS-Care coverage tier, as determined by TRS-Care, and add dependent coverage in that same coverage tier.

(6) An eligible participant who is enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll in any TRS-Care coverage tier and add dependent coverage in that same coverage tier.

(7) An eligible participant, at the time of his or her Age 65 Additional Enrollment Opportunity, can choose to remain in the same TRS-Care coverage tier and add dependent coverage in that coverage tier.

(8) The period to enroll in TRS-Care pursuant to the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:

(A) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(B) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(b) Special Enrollment Event Opportunity.

(1) Except as provided in the exceptions found in subparagraphs (A) - (C) of this paragraph, an individual who becomes eligible for coverage under the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), including a dependent whose coverage under TRS-Care was waived due to the existence of other coverage for the dependent during the Age 65 Additional Enrollment Opportunity described in subsection (a) of this section, may elect to enroll in TRS-Care.

(A) In no event may an individual who is already enrolled in TRS-Care elect a different plan, for himself or any eligible dependents, but may only add eligible dependents for coverage under the individual's existing plan selection upon the occurrence of a special enrollment event.

(B) In no event may a TRS retiree enroll in TRS-Care as a result of a special enrollment event applicable to his dependent.

(C) In no event, as a result of a special enrollment event applicable to the dependent, may the dependent of a TRS retiree enroll in TRS-Care if the TRS retiree is not enrolled in TRS-Care.

(2) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed TRS-Care application must be received by TRS within this 31-day period.

(c) Enrollment Opportunity Established by TRS. If an eligible TRS retiree or his eligible dependent does not have either an Age 65 Additional Enrollment Opportunity or a special enrollment event, then he may enroll in TRS-Care only during a subsequent enrollment period established by TRS.

(d) This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care coverage tier to drop coverage, select a lower coverage tier, or drop dependents at any time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2008.

TRD-200801323
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 25, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 542-6438

34 TAC §41.5

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.5 concerning a disability retiree's payment of monthly contributions for their own participation and their dependents' participation in the health benefits program for TRS retirees (TRS-Care), administered by TRS as trustee. The amended section is adopted in response to legislation providing for an additional contribution by disability retirees who earn excess compensation for work during retirement. The amended section is adopted without changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8428).

House Bill 2427, 80th Legislature, Regular Session (2007) ("H.B. 2427") authorizes TRS to adopt rules requiring TRS disability retirees to report income earned from other employment and to adopt rules providing for suspension of coverage or reduction of disability retirement annuities based on compensation earned by a disability retiree. H.B. 2427 also requires a disability retiree whose annuity is suspended to pay additional TRS-Care premium amounts as determined by the trustee. Amended §41.5, a TRS-Care rule, is adopted in response to H.B. 2427. To implement the related pension provisions concerning the suspension of coverage or reduction of disability retirement annuities based on compensation earned by a disability retiree, the Board also adopts new rules 34 TAC §§31.35 (relating to Disability Retiree Report of Excess Compensation), 31.36 (relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation), and 31.37 (relating to Applicability of Excess Compensation Provisions to Employment in Texas Public Educational

Institutions), as published elsewhere in this issue of the *Texas Register*.

Amended §41.5 requires a disability retiree whose annuity payments have been forfeited pursuant to H.B. 2427 to pay the total cost of TRS-Care coverage, including dependent coverage, during the months of annuity forfeiture. Failure to timely pay such total costs will result in the suspension of TRS-Care coverage for the disability retiree and his dependents. During the suspension of coverage, (i) coverage under TRS-Care will cease and the costs of coverage for TRS-Care will no longer accrue, and (ii) TRS-Care coverage of a dependent shall not be terminated for failure to make the required contribution for coverage, and (iii) TRS-Care 2 or TRS-Care 3 coverage of a disability retiree shall not be dropped to TRS-Care 1 coverage for failure to make any required contribution for coverage.

No later than the last day of the month in which TRS resumes annuity payments to the disability retiree, the amended section requires the disability retiree to pay all costs of TRS-Care coverage due and owing, including past due amounts for coverage prior to the suspension of coverage and the costs of coverage for all months during which the disability retiree's annuity payments are resumed, if any. Failure to timely make such a payment will result in (i) any TRS-Care 2 or TRS-Care 3 coverage held by a disability retiree before the suspension being dropped to TRS-Care 1 coverage, (ii) TRS-Care 1 coverage being resumed for the disability retiree who had TRS-Care 1 coverage before the suspension of coverage, at no cost to the disability retiree, and (iii) TRS-Care coverage for the disability retiree's dependents who were enrolled in TRS-Care 1, 2, or 3 being terminated.

Pursuant to amended §41.5, reinstatement of TRS-Care coverage will be effective the first (1st) day of the earliest month for which the disability retiree's annuity payments are resumed. For example, if in May, the disability retiree's annuity payments are resumed for not only the month of April, but also the month of March, then the disability retiree's TRS-Care coverage is also reinstated effective the first (1st) day of March. As noted above, the amounts then due and owing from the disability retiree would include an amount payable for TRS-Care coverage during the month of March and April in this example.

A disability retiree may not change TRS-Care 1 coverage tier or add dependents unless and until the disability retiree has an additional enrollment opportunity as set out in 34 TAC §41.2 (relating to Additional Enrollment Opportunities) or some other opportunity under §1575.161 of the Insurance Code (relating to Open Enrollment; Additional Enrollment Periods).

The non-substantive amendments to §41.5 are adopted for purposes of clarification.

No comments were received regarding the proposed amended section.

Statutory Authority: The amended section is adopted under the following sections of the Insurance Code: §1575.052, which authorizes TRS as trustee for TRS-Care to adopt rules reasonably necessary to implement and administer TRS-Care, including procedures for contributions and deductions, and §1575.212, which authorizes TRS as trustee for TRS-Care to establish ranges for payment of the share of total costs allocated under §1575.211 to retirees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2008.

TRD-200801363
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 27, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 542-6438

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34 TAC §41.7

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.7 relating to the effective date of coverage under TRS-Care, the health benefits program for TRS retirees administered by TRS, as trustee. The substantive amendments are adopted mainly to implement recent legislation concerning health benefit coverage during the transition period from active employment to retirement. The amended section is adopted without changes to the proposed text of the rule as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8701).

TRS has in the past facilitated the transition of retiring individuals from their existing health coverage to coverage under TRS-Care by having in place an option to defer the effective date of TRS-Care coverage. Depending upon the date of the individual's retirement and the date TRS received the individual's retirement application, a TRS member could defer the effective date of his TRS-Care coverage for either one or two months.

House Bill 973, 80th Legislature, Regular Session (2007) ("H.B. 973") made changes to §22.004 of the Education Code (relating to Group Health Benefits for School Employees) that entitle an employee of a district, who resigns effective after the last day of an instructional year, to participate or be enrolled in his existing coverage, whether under TRS-ActiveCare or under some other coverage offered by the individual's employer, for an additional period of time beyond his date of resignation. In the usual situation, this additional period of time will extend the individual's existing coverage through the summer months (i.e., June, July, and August). In light of the above, TRS amends §41.7 to expand the existing option to defer TRS-Care coverage to allow TRS members to defer the effective date of TRS-Care coverage for themselves and their eligible dependents for up to three months. This additional month of available deferment will allow individuals greater flexibility to avoid either having to pay premiums for coverage under both their existing health benefits plan and under TRS-Care for the month of August or having to drop their coverage under their existing health benefits plan during the month of August while at the same time starting their TRS-Care coverage.

Accordingly, in relettered subsection (b) of amended §41.7, regardless of the date a TRS member submits her application for retirement, if the TRS member timely submits an application for TRS-Care coverage, she may defer the effective date of coverage for herself and her eligible dependents to the first day of any of the three (3) months immediately following the month after the effective date of retirement. However, in no event may the TRS member choose an effective date for TRS-Care coverage that

begins before the first day of the month that immediately follows the month in which the TRS-Care application for coverage is received by TRS-Care.

For example, consider an individual who chooses a retirement date of May 31st. Assume that this individual submits his application for TRS-Care coverage before his retirement date of May 31st. Normally, this individual's TRS-Care coverage will begin on June 1st. However, this individual may choose to have his TRS-Care coverage begin on July 1st, August 1st, or September 1st (i.e., the first day of any of the three (3) months immediately following the month after the effective date of his retirement). However, if this same individual does not submit his application for TRS-Care coverage until July, then this individual's TRS-Care coverage will normally begin on August 1st. Assuming this individual still chooses a May 31st retirement date, this individual can defer the effective date of his TRS-Care coverage to September 1st. This retiree cannot choose to have TRS-Care coverage begin June 1st or July 1st, nor can he defer the effective date of his coverage to October 1st or November 1st.

The non-substantive amendments to §41.7 are adopted for purposes of clarification (for example, see relettered §41.7(f) concerning special enrollment events) or to delete subsections that are no longer necessary.

No comments were received regarding the proposed amended section.

Statutory Authority: The amended section is adopted under the authority of §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2008.

TRD-200801324
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 25, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 542-6438

♦ ♦ ♦

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.50, §41.51

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to the following rules for the health benefits program for active public education employees (TRS-ActiveCare) administered by TRS, as trustee: §41.50 concerning administrative appeals relating to claims and §41.51 concerning administrative appeals relating to eligibility. The amended sections are adopted without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9097).

Amended §41.50 and §41.51 respectively address the process that participants in TRS-ActiveCare can use to appeal a denial of a claim or a denial of a request to enroll in TRS-ActiveCare. Before the merits of an appeal are reviewed by the TRS Appeal Committee (the "Committee"), a determination is made as to whether or not the appeal has been timely filed. If the Committee determines that the appeal was not timely made, this finding becomes the final decision of TRS.

Section 41.50 concerns appeals relating to claims and other benefits under TRS-ActiveCare that are made to the Committee and possibly thereafter to the Executive Director. The most significant adopted change to the section is to delete current subsection (f) and replace it with adopted new subsection (o). The adopted change under new subsection (o) provides that the Committee shall review appeals made at any stage of the appeal process for timeliness and not just the appeal initially made within the appeal process. The remaining changes adopted for §41.50 are for clarification and renumbering purposes only.

Section 41.51 concerns appeals relating to eligibility under TRS-ActiveCare. The rule addresses appeals relating to eligibility that are made to the Committee and possibly thereafter to the Executive Director. The most significant adopted change to §41.51 is to delete current subsection (e) and replace it with adopted new subsection (i). As with the adopted amendments to §41.50(o), the adopted change under new subsection (i) to §41.51 provides that the Committee shall review appeals made at any stage of the appeal process for timeliness and not just the appeal initially made within the appeal process. The remaining changes adopted for §41.51 are for clarification and renumbering purposes only.

No comments were received regarding the proposed amended sections.

Statutory Authority: The amended sections are adopted under the authority of §1579.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-ActiveCare program; and §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2008.

TRD-200801325
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 25, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 542-6438

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files notice of intent to review §195.51, Sex Offender Supervision. The proposed review is conducted in accordance with Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of the notice in the *Texas Register.*

TRD-200801356
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: March 7, 2008

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC), Chapter 71, Creditable Service, pursuant to Texas Government Code §2001.039. As required by this statute, the review will assess whether the reasons for initially adopting 34 TAC Chapter 71 continue to exist and whether any amendments should be made to the chapter as a result of this review. The public comment period will last 30 days beginning with the publication of this Notice of Intent to Review in the *Texas Register*.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200801392
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: March 11, 2008

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.232(c)(17)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

where: s = estimated standard deviation of the population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample

Figure: 25 TAC §289.232(i)(5)(B)(iii)
BRC FORM 232-1

Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3189

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY
Your employer is required to-
1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER
You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES
1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys, and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY
1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.232(i)(4)(A) - (C) (relating to Radiation Control Regulations for Dental Radiation Machines). This subsection specifies limits on exposure to radiation.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.231 (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation);
(a) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation.
(b) your employer must give you a written report of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS
All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers, who believes that there is a violation of the Texas Radiation Control Act, the rules issued thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request my set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violations as described above.

POSTING REQUIREMENTS

Copies of this notice shall be posting in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.232 (relating to Radiation Control Regulations for Dental Radiation Machines), to permit employees to observe a copy on the way to or from their place of employment.

Figure: 25 TAC §289.232(i)(6)(E)(i)(I)

TABLE I. HALF-VALUE LAYER FOR SELECTED KILOVOLT PEAK

X-ray Tube Voltage (kilovolt peak)		Measured Half-Value Layer (millimeters of aluminum)
Designed operating range	Measured operating potential	
Below 51 --------	30	1.5
	40	1.5
	50	1.5
51 to 70 --------	51	1.5
	60	1.5
	70	1.5
Above 70 --------	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

Figure: 25 TAC §289.232(j)(1)(L)(i)(II)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552----CONFIDENTIAL

This document contains information submitted to the Department of State Health Services, Radiation Control by

_____
(Name of Company)(Name of Submitter)

that is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____
(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____
(Signature and Title)(Office)(Date)"

Figure: 25 TAC §289.233(c)(18)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

where: s = estimated standard deviation of the population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample

Figure: 25 TAC §289.233(i)(3)(F)(vii)

PAGE _____ OF _____

BRC Form 233-1
Services/Radiation Control

Department of State Health

OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX ☐ MALE ☐ FEMALE	5. DATE OF BIRTH

6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	9A. ☐ RECORD ☐ ESTIMATE	9B. ☐ ROUTINE ☐ PSE

INTAKES

10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN µCi

DOSES (in rem)

DEEP DOSE EQUIVALENT (DDE)	11.
EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)	12.
SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)	13.
SHALLOW DOSE EQUIVALENT, MAX EXTREMITY(SDE,ME)	14.
COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)	15.
COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)	16.
TOTAL EFFECTIVE DOSE EQUIVALENT *(BLOCKS 11 + 15) (TEDE)*	17.
TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN *(BLOCKS 11 + 16) (TODE)*	18.

19. COMMENTS

20. SIGNATURE -- LICENSEE OR REGISTRANT	21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF BRC FORM 233-1

(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee or registrant.

8. Enter the Agency license or registration number or numbers.

9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.

9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.

10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###x," for instance, Cs-137 or Tc-99m.

10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for other) for all intakes by inhalation.

10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."

10D. Enter the intake of each radionuclide in µCi.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. COMMENTS.
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.

20. Signature of the person designated to represent the licensee or registrant.

21. Enter the date this form was prepared.

Figure: 25 TAC §289.233(i)(4)(B)(iii)
BRC FORM 233-2

Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3189

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY
Your employer is required to-
1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER
You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES
1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY
1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit as set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.233(i)(3)(A) (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine). This subsection specifies limits on exposure to radiation.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §282.233(i)(3)(B);
(a) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation; and
(b) your employer must give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS
All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers who believes that there is a violation of the Texas Radiation Control Act, the rules issued thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.233 (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), to permit employees to observe a copy on the way to or from their place of employment.

Figure: 25 TAC §289.233(j)(1)(K)(i)(II)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552----CONFIDENTIAL

This document contains information submitted to the Department of State Health Services, Radiation Control by

_____

(Name of Company) (Name of Submitter)

which is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____

(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____

(Signature and Title) (Office) (Date)"

Figure: 25 TAC §289.301(ee)

Specific Subsection	Name of Record	Time Interval Required for Record Keeping
(a)(1)	Current Certificate of Laser Registration	Until termination of Certificate of Laser Registration
(b)(5)	Current 25 TAC §§289.203, 289.204, 289.205, 289.231, 289.301	Until termination of Certificate of Laser Registration
(j)(8)	Receipt, transfer, and disposal	Until termination of Certificate of Laser Registration
(r)(2)	Operator instructions for safe use for laser machines being used at present time	Until termination of Certificate of Laser Registration
(t)(1)(E)	Eye protection	5 years
(y)	Measurements and instrumentation	5 years
(z)	Notification of injury other than a medical event	5 years
(aa)	Reports of injuries	5 years
(bb)	Medical event	5 years
(cc)	Reports of stolen, lost, or missing lasers or IPL devices	Until termination of Certificate of Laser Registration or 5 years for IPL devices

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Public Hearings

In accordance with the Texas Agriculture Code, §76.004 and §76.005, the Texas Department of Agriculture (the department) hereby provides notice of hearings to take public comment on the department's proposed amendments to Title 4, Texas Administrative Code (TAC), Chapter 7, §7.23 and §7.24, concerning pesticide licensing and regulation. The proposed amendments are published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1673). The proposed amendments to §7.23 add language to clarify that a liability insurance policy is the only acceptable form of proof of financial responsibility for applicator businesses, which is the department's current practice. The proposed amendments to §7.24 add language that requires that commercial or noncommercial applicators that are certified in the aerial application category obtain three of the required five continuing education units (CEUs) in laws and regulations, drift minimization and pesticide safety activities addressing human factors. Persons directly affected by the proposed amendments are pesticide applicators licensed with or seeking licensure from the department under the Texas Agriculture Code, Chapter 76 and Title 4, TAC, Chapter 7.

Hearings will be held on Monday, March 24, 2008, at the Texas Department of Agriculture regional offices, as follows:

(1) West Texas Regional Office: Beginning at 10:00 a.m., at 4502 Englewood Avenue, Lubbock, Texas. For information contact Steve Jones, (806) 799-8555.

(2) North Texas Regional Office: Beginning at 3:00 p.m., at 1720 Regal Row, Suite 118, Dallas, Texas. For information contact E. W. Wesley, (214) 631-0265.

(3) Gulf Coast Regional Office: Beginning at 10:00 a.m., at the Elias Ramirez State Office Building, 5425 Polk Street, Suite G-20, Houston, TX 77023. For information contact Jennifer Bailey at (713) 921-8200.

(4) South Central Regional Office: Beginning at 10:00 a.m., at 8918 Tesoro Drive, Suite 120, San Antonio, Texas. For information contact Ken Weidenfeller, (210) 820-0288

(5) Valley Regional Office: Beginning at 10:00 a.m., at 900-B East Expressway 83, San Juan, Texas. For information contact Jose Sanchez, (956) 787-8866.

For questions about obtaining copies of the rule proposal, please contact Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 936-2638.

TRD-200801418
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 12, 2008

♦ ♦ ♦

Capital Area Rural Transportation System

Public Notice

The Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the construction of an intermodal transit facility in Georgetown, Texas.

Request for Proposal and Construction Documents will be available at CARTS Headquarters facility located at 2010 E. 6th St., Austin, Texas 78702-6050 beginning at 2:00 p.m., Wednesday March 26, 2008. A $200.00 refundable deposit check payable to CARTS will be required for each set, with a maximum of four (4) sets per company.

A non-mandatory pre-proposal meeting will be held at the same address at 2:00 p.m., April 9, 2008.

The schedule is:

Wednesday, March 26: 2:00 p.m. - RFP Documents/CDs ready to be picked up by contractors.

Wednesday, April 9: 2:00 p.m. - Pre-Proposal Conference at CARTS.

Monday, April 21: 2:00 p.m. - Deadline for Proposal Questions.

Thursday, April 24: Responses Distributed via electronic-mail only.

Wednesday, April 30: 2:00 p.m. - Proposals Due at CARTS.

Proposals will be evaluated on cost, qualifications, experience, and the quality and content of the submittal.

TRD-200801400
David Marsh
General Manager
Capital Area Rural Transportation System
Filed: March 11, 2008

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72 - 75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the following notice of contract awards for providing professional unclaimed property audit services.

The Notice of Request for Proposals (RFP #179b) was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4250).

Contracts were awarded to:

Audit Services U.S., LLC, 212 West 35th Street, Suite 600, New York, New York 10001. The term of the contract is October 5, 2007 through August 31, 2008, with option for two additional one-year renewals.

Abandoned Property Experts, LLC, 5521 Geddes Road, Ann Arbor, Michigan 48105. The term of the contract is November 29, 2007 through August 31, 2008, with option for two additional one-year renewals.

Affiliated Computer Services, Inc. d/b/a ACS Unclaimed Property Clearinghouse, 260 Franklin Street, 11th Floor, Boston, Massachusetts

02110. The term of the contract is December 14, 2007 through August 31, 2008, with option for two additional one-year renewals.

The total amount of each contract is based on a percentage of the cash value of net unclaimed property received by Comptroller as a result of an audit.

TRD-200801330
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 6, 2008

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/10/08 - 03/16/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/10/08 - 03/16/08 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 03/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 03/01/08 - 03/31/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200801327
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 5, 2008

♦ ♦ ♦

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/17/08 - 03/23/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/17/08 - 03/23/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200801377
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 10, 2008

♦ ♦ ♦

Court of Criminal Appeals

Order Amending Texas Rules of Evidence and Appellate Procedure

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 08-100

It is hereby ORDERED that:

1. Pursuant to Texas Government Code §§22.108 and 22.109, the Texas Rules of Evidence and the Texas Rules of Appellate Procedure are amended as follows.

2. Comments on these revisions may be submitted to the Court of Criminal Appeals in writing on or before June 30, 2008.

3. These amended rules, with any changes made after public comments are received, take effect September 1, 2008.

4. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature before December 1, 2008; and

d. submit a copy of this Order for publication in the *Texas Register.*

SIGNED AND ENTERED this 4th day of March, 2008.

_____

Sharon Keller, Presiding Judge

_____

Lawrence E. Meyers, Judge

_____

Tom Price, Judge

_____

Paul Womack, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Charles Holcomb, Judge

_____

Cathy Cochran, Judge

TEXAS RULES OF EVIDENCE

Rule 503. Lawyer-Client Privilege

(a) Definitions. [no change]

(b) ~~Rules of Privilege.~~ General Rule of Privilege. ~~(1) General rule of privilege.~~ A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made

for the purpose of facilitating the rendition of professional legal services to the client:

(1)~~(A)~~ between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(2)~~(B)~~ between the lawyer and the lawyer's representative;

(3)~~(C)~~ by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4)~~(D)~~ between representatives of the client or between the client and a representative of the client; or

(5)~~(E)~~ among lawyers and their representatives representing the same client.

~~(2) Special rule of privilege in criminal cases. In criminal cases, a client has a privilege to prevent the lawyer or lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.~~

(c) Who May Claim the Privilege. [no change]

(d) Exceptions. [no change]

Comment to 2008 changes: This rule governs only the lawyer-client privilege. The deletion of former Rule 503(b)(2) [Special rule of privilege in criminal cases] is not intended to restrict the scope of either the work-product doctrine or the lawyer's professional duty not to reveal the confidential information of a client. See Texas Disciplinary Rule of Professional Conduct 1.05.

TEXAS RULES OF APPELLATE PROCEDURE

8.1 Notice of Bankruptcy. Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number; and

(d) the date when the bankruptcy petition was filed. ~~; and~~

~~(e) an authenticated copy of the page or pages of the bankruptcy petition that show when the petition was filed.~~

Comment to 2008 change: The amendment eliminates the former requirement that the bankruptcy notice contain certain pages of the bankruptcy petition, in recognition that electronic filing is now prevalent in bankruptcy courts and access to bankruptcy petitions is widely available through the federal PACER system.

Rule 9. Papers Generally

9.3 Number of Copies

(b) *Supreme Court and Court of Criminal Appeals.* Except as otherwise provided in this rule, a ~~A~~ party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals. In the Supreme Court, only an original and two copies of a motion for extension of time or a response to the motion must be filed. ~~, except that~~ In the Court of Criminal Appeals, only the original of the following must be filed ~~in the Court of Criminal Appeals~~:

(1) a motion for extension of time or a response to the motion; or

(2) a pleading under Code of Criminal Procedure article 11.07.

9.8 Protection of Minor Child's Identity in Appellate Proceedings Following Parental-Rights Termination Proceedings or Juvenile Court Proceedings

(a) *Redaction of Minors' Names Generally Required in Appellate Briefing and Opinions.*

(1) In an appeal or original proceeding following a trial at which the termination of parental rights was at issue, a minor child shall be identified only by one or more initial letters of the minor's name or by a fictitious name in any papers-except a docketing statement-submitted to an appellate court, or in any opinion issued by an appellate court, unless the court orders otherwise.

(2) In an appeal or original proceeding following trial proceedings under Title 3 of the Family Code, a minor child shall be identified only by one or more initial letters of the minor's name or by a fictitious name in any papers-except a docketing statement-submitted to an appellate court, or in any opinion issued by an appellate court.

(b) *Redaction of Parents' Names.*

(1) In an appeal or original proceeding described in paragraph (a)(1), an appellate court may substitute in an opinion, and may order parties and amici curiae to substitute in any papers submitted to the appellate court, one or more initial letters or a fictitious name for the name of a minor child's parent or other family member if the court determines that such substitution is necessary to protect the minor child's identity.

(2) In an appeal or original proceeding described in paragraph (a)(2), an appellate court must substitute in an opinion, and parties and amici curiae must substitute in any papers submitted to the appellate court, one or more initial letters or a fictitious name for the name of a minor child's parent or other family member.

(c) *Redaction of Children's Names In Copies of Appendix Items.* In an appeal or original proceeding described in paragraph (a)(1) or (a)(2), for any necessary or optional appendix items to be included with a brief, petition, or motion, copies of any appendix items containing the name of a minor child shall be redacted so that the minor is identified only by one or more initial letters of the minor's name or by a fictitious name.

(d) *Redaction of Parents' Names In Copies of Appendix Items.*

(1) In an appeal or original proceeding described in paragraph (a)(1), an appellate court may order the substitution of initials or a fictitious name for the name of a minor child's parents or other family members in any necessary or optional appendix items to be included with a brief, petition, or motion if the court determines that such substitution is necessary to protect the minor child's identity.

(2) In an appeal or original proceeding described in paragraph (a)(2), parties and amici curiae must substitute initials or a fictitious name for the name of a minor child's parents or other family members in any necessary or optional appendix items to be included with a brief, petition, or motion.

(e) *No Alteration of Appellate Record.* Nothing in this rule authorizes alteration of the original appellate record except as specifically authorized by court order.

Comment to 2008 change: This is a new rule. Family Code §109.002(d) authorizes appellate courts, in their opinions, to identify parties to suits affecting the parent-child relationship (SAPCR) by fictitious names or by initials only. This law allows courts to protect the privacy interests of minor children involved in SAPCR proceedings, including suits to terminate parental rights. Similarly, Family Code §56.01(j) prohibits identification of a minor child or his family in an appellate opinion related to juvenile court proceedings. However, as appellate briefing becomes more widely available through electronic

media sources, appellate courts' efforts to protect minor children's privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides for the use of initials or fictitious names to protect the identity of a minor child following a parental-rights termination proceeding or juvenile court proceeding. Any fictitious name used for a parent or child should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases.

Rule 10. Motions in the Appellate Court

10.1 Contents of Motions; Response

(a) *Motion.* Unless these rules prescribe another form, a party must apply by motion for an order or other relief. The motion must:

(5) in civil cases, except for motions for rehearing and motions for en banc reconsideration of panel decisions, contain or be accompanied by a certificate stating that the filing party conferred or made a reasonable attempt to confer with other parties about the merits of the motion and whether those parties oppose the motion.

10.2 Evidence on Motions. A motion need not be verified unless it depends on the following types of facts, in which case the motion must be supported by affidavit or other satisfactory evidence. The types of facts requiring proof are those that are:

(a) not in the record;

(b) not within the court's knowledge in its official capacity; ~~or~~ and

(c) not within the personal knowledge of the attorney signing the motion.

Comment to 2008 change: It is presumed that non-movants will oppose the relief sought in motions for rehearing and motions for en banc reconsideration. To encourage consistent application of the certificate-of-conference requirement, Rule 10.1(a)(5) is amended - and Rule 49.11 is added - to exempt those motions from the certificate requirement.

Rule 19. Plenary Power of the Courts of Appeals and Expiration of Term

19.1 Plenary Power of Courts of Appeals. A court of appeals' plenary power over its judgment expires:

(a) 60 days after judgment if no timely filed ~~motion to extend time or~~ motion for rehearing, timely filed motion for en banc reconsideration, or timely filed motion to extend time to file a motion for rehearing or for en banc reconsideration is then pending.

(b) 30 days after the court overrules all timely filed motions for rehearing, ~~including~~ all timely filed motions for en banc reconsideration of a panel's decision under Rule 49.~~7~~6, and all timely motions to extend time to file a motion for rehearing or a motion for en banc reconsideration.

Comment to 2008 change: The provisions of Rule 19 governing the courts of appeals' plenary power are revised in conjunction with the amendments to Rules 49 and 53.7 concerning motions for en banc reconsideration.

Rule 20. When Party Is Indigent

20.1 Civil Cases

(a) *Establishing indigence.* A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(1) the party files an affidavit of indigence in compliance with this rule;

(2) the claim of indigence is not contested, is not contestable, or if contested, the contest is not sustained by written order; and

(3) the party timely files a notice of appeal.

(b) *Contents of affidavit.* The affidavit of indigence must identify the party filing the affidavit and must state what amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

(12) if applicable, the party's lack of the skill and access to equipment necessary to prepare the appendix, as required by Rule 38.5(d).

(c) *TAJF Certificate.* If the appellant proceeded in the trial court without payment of fees pursuant to an Interest on Lawyers Trust Accounts (IOLTA) or other Texas Access to Justice Foundation (TAJF) certificate, an additional TAJF certificate may be filed in the appellate court confirming that the TAJF-funded program rescreened the party for income eligibility under TAJF income guidelines after entry of the trial court's judgment. A party's affidavit of inability accompanied by an attorney's TAJF certificate may not be contested.

~~(c)~~(d) *When and Where Affidavit Filed.*

(1) *Appeals.* An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Rule 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence. An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(3) *Extension of time.* The appellate court may extend the time to file an affidavit if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b). But the appellate court may not dismiss the appeal or affirm the trial court's judgment on the ground that the appellant has failed to file an affidavit or a sufficient affidavit of indigence unless the court has first provided the appellant notice of the deficiency and a reasonable time to remedy it.

~~(d)~~(e) *Duty of Clerk.*

(1) *Trial court clerk.* If the affidavit of indigence is filed with the trial court clerk under (~~c~~d)(1), the clerk must promptly send a copy of the affidavit to the appropriate court reporter.

(2) *Appellate court clerk.* If the affidavit of indigence is filed with the appellate court clerk ~~under (c)(2)~~ and if the filing party is requesting the preparation of a record, the appellate court clerk must:

(A) send a copy of the affidavit to the trial court clerk and the appropriate court reporter; and

(B) send to the trial court clerk, the court reporter, and all parties, a notice stating the deadline for filing a contest to the affidavit of indigence.

~~(e)~~(f) *Contest to affidavit.* The clerk, the court reporter, the court recorder, or any party may challenge ~~the claim of indigence~~ an affidavit that is not accompanied by a TAJF certificate by filing - in the court in which the affidavit was filed - a contest to the affidavit of indigence. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

~~(f)~~(g) *No contest filed.* [no change to rule text]

~~(g)~~(h) *Burden of proof.* [no change to rule text]

~~(h)~~(i) *Decision in appellate court.* [no change to rule text]

~~(i)~~(j) *Hearing and decision in the trial court.* [no change to rule text]

~~(j)~~(k) *Record to be prepared without payment.* [no change to rule text]

~~(k)~~(l) *Partial payment of costs.* [no change to rule text]

~~(l)~~(m) *Later ability to pay.* [no change to rule text]

~~(m)~~(n) *Costs defined.* [no change to rule text]

Comment to 2008 changes: Rule 20 is revised to clarify that an affidavit of indigence filed during trial is insufficient to establish indigence on appeal; a separate affidavit must be filed with or before the notice of appeal. The amended rule also provides that an appellate court must give an appellant who fails to file a proper appellate indigence affidavit notice of the defect and an opportunity to cure it before dismissing the appeal or affirming the judgment on that basis. *See Higgins v. Randall County Sheriff's Office*, 193 S.W.3d 898 (Tex. 2006). As amended, Rule 20 mirrors Tex. R. Civ. P. 145 by providing that an appellate indigence affidavit accompanied by an IOLTA or other Texas Access to Justice Foundation (TAJF) certificate is not subject to challenge. In Rule 20.1(e)(2) (formerly (d)(2)), the limiting phrase "under (c)(2)" is deleted to clarify that the appellate clerk's duty to forward copies of the affidavit to the trial court clerk and the court reporter, along with a notice setting a deadline to contest the affidavit, applies to affidavits on appeal erroneously filed in the appellate court, not only to affidavits in other appellate proceedings properly filed in the appellate court under 20.1(c)(2).

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.2 Amount of Bond, Deposit or Security

(c)*Determination of Net Worth*

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(~~a~~ A) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. ~~The affidavit is prima facie evidence of the debtor's net worth.~~ A trial court clerk must receive and file a net worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed ~~affidavit of~~ net worth. A net worth affidavit filed with the trial court clerk and in compliance with Rule 24.2(c)(1) is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

24.4 Appellate Review

(a)*Motions; Review.* On a party's motion to the appellate court, that court may review:

(5) the trial court's exercise of discretion under Rule 24.3(a).

(d) *Filing in Appellate Court.* A motion filed under paragraph (a) should be filed in the court of appeals having potential appellate jurisdiction over the underlying judgment. The court of appeals' ruling is subject to review on petition for writ of mandamus to the Texas Supreme Court.

~~(d)~~(e) *Action by Appellate Court.* [no change to rule text]

~~(e)~~(f) *Effect of Ruling.* [no change to rule text]

Comment to 2008 changes: Rule 24.2(c)(3) is amended to provide procedural guidance when the trial court orders additional security to supercede the judgment. New Rule 24.4(d) is added to clarify that an appellate motion seeking relief from a supersedeas order should be filed in the court of appeals that presumably will have jurisdiction when appeal of the underlying case is perfected. The same provision also specifies that a petition for writ of mandamus is the proper procedural vehicle to seek Supreme Court review of a court of appeals' ruling on a supersedeas motion. *See In re Smith / In re Main Place Custom Homes, Inc.*, 192 S.W.3d 564, 568 (Tex. 2006) (per curiam).

Rule 26. Time to Perfect Appeal

26.2. Criminal Cases

(b) *By the State.* The notice of appeal must be filed within ~~15~~ 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

Rule 28. Accelerated Appeals in Civil Cases

28.1 Civil Cases-Appeal As of Right

(a) *Types of Accelerated Appeals.* Appeals from interlocutory orders (when allowed as of right by statute), appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and appeals required by law to be filed or perfected within less than 30 days after the date of the order or judgment being appealed are accelerated appeals.

(b) *Perfection of Accelerated Appeal.* Unless a statute expressly prohibits modification or extension of any statutory appellate deadlines, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3, regardless of any statutory deadlines. Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

(c) *Appeals of Interlocutory Orders.* The trial court need not, but may - within 30 days after the order is signed - file findings of fact and conclusions of law.

(d) *Quo Warranto Appeals.* The trial court may grant a motion for new trial timely filed under Texas Rule of Civil Procedure Rule 329b (a) - (b) until 50 days after the trial court's final judgment is signed. If not determined by signed written order within that period, the motion will be deemed overruled by operation of law on expiration of that period.

(e) *Record and Briefs.* In lieu of the clerk's record, the appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers. The appellate court may allow the case to be submitted without briefs. The deadlines and procedures for filing the record and briefs in an accelerated appeal are provided in Rules 35.1 and 38.6.

28.2 Agreed Interlocutory Appeals in Civil Cases

(a) *Perfecting appeal.* To perfect an appeal of an interlocutory order under Civil Practice and Remedies Code §51.014(d), a party to the trial court proceeding must:

(1) file a notice of accelerated appeal with the trial court clerk not later than the 20th day after the date the trial court signs a written order granting permission to appeal, unless the court of appeals extends the time for filing pursuant to Rule 26.3;

(2) file with the clerk of the appellate court a copy of the notice of accelerated appeal, as specified in Rule 25.1, and a docketing statement, as specified in Rule 32.1;

(3) pay to the clerk of the appellate court all required fees authorized to be collected by the clerk; and

(4) serve a copy of the notice of accelerated appeal on all parties to the trial court proceeding.

(b) *Contents of Notice.* The notice of accelerated appeal must contain, in addition to the items required by Rule 25.1(d), the following:

(1) a list of the names of all parties to the trial court proceeding and the names, addresses and telefax numbers of all trial and appellate counsel;

(2) a copy of the trial court's order granting permission to appeal;

(3) a copy of the trial court order appealed from;

(4) a statement that all parties to the trial court proceeding agreed to the trial court's order granting permission to appeal;

(5) a statement that all parties to the trial court proceeding agreed that the order granting permission to appeal involves a controlling question of law as to which there is a substantial ground for difference of opinion;

(6) a brief statement of the issues or points presented; and

(7) a concise explanation of how an immediate appeal may materially advance the ultimate termination of the litigation.

(c) *Jurisdiction.* If the court of appeals determines that a notice of appeal filed under this section does not demonstrate the court's jurisdiction, it may order the appellant to file an amended notice of appeal. The court of appeals may also, on a party's motion or its own motion, order the appellant or any other party to file briefing addressing whether the appeal satisfies the criteria specified in Civil Practice and Remedies Code §51.014(d), and may require the parties to file supporting evidence. If, after providing an opportunity to file an amended notice of appeal or briefing addressing potential jurisdictional defects, the court of appeals concludes that jurisdictional defects exist, it may dismiss the appeal for want of jurisdiction at any stage of the appeal.

(d) *Record; briefs.* The rules governing the filing of the appellate record and briefs in accelerated appeals apply. A party may address in its brief any issues related to the court of appeals' jurisdiction, including whether the appeal satisfies the criteria specified in Civil Practice and Remedies Code §51.014(d).

(e) *No automatic stay of proceedings in trial court.* An appeal under Civil Practice and Remedies Code §51.014(d) does not stay proceedings in the trial court unless the parties agree to - and the trial court, the court of appeals, or a justice of the court of appeals orders - a stay of the proceedings.

Comment to 2008 changes: The provisions of prior Rule 28 are amended and reorganized as new Rule 28.1 to more clearly define accelerated appeals and provide a uniform appellate timetable. Many statutes provide for accelerated or expedited appellate timetables, including, among others, appeals of final judgments in a suit in which termination of the parent-child relationship is in issue as provided in Family Code §109.002. Unless a statute expressly prohibits rulemaking that would alter a statutory appellate deadline, Rule 28 is made expressly applicable to all such appeals.

New Rule 28.2 is added to provide procedures governing an appeal of an interlocutory order under Civil Practice and Remedies Code §51.014(d). The Legislature deleted former subsection (f) of §51.014 in 2005, eliminating the provision that gave the court of appeals discretion as to whether to permit an agreed appeal. New Rule 28.2 reflects the statutory procedure as modified by the 2005 amendment.

Rule 29. Orders Pending Interlocutory Appeal in Civil Cases

29.5. Further Proceedings in Trial Court. While appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and unless prohibited by statute may make further orders, including one dissolving the order complained of on appeal. ~~appealed from, and i~~If permitted by law, the trial court may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.

Comment to 2008 changes: Rule 29.5 is amended to correspond with Civil Practice and Remedies Code §51.014(b), as amended in 2003, staying all proceedings in the trial court pending resolution of interlocutory appeals of class certification orders, denials of summary judgments based on assertions of immunity by governmental officers or employees, and orders granting or denying a governmental unit's plea to the jurisdiction.

Rule 38. Requisites of Briefs

38.1 Appellant's Brief. The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) *Identity of parties and counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8.

(e) *Statement Regarding Oral Argument.* The brief may include a statement explaining why oral argument should, or should not, be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of its brief.

~~(e)~~(f) *Issues Presented.* [no change to rule text]

~~(f)~~(g) *Statement of Facts.* [no change to rule text]

~~(g~~(h) *Summary of the Argument.* [no change to rule text]

~~(h)~~(i) *Argument.* [no change to rule text]

~~(i)~~(j) *Prayer.* [no change to rule text]

~~(j)~~(k) *Appendix in Civil Cases.* [no change to rule text]

38.4 Length of Briefs. An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix.

Comment to 2008 changes: Rule 38 is amended to provide for an optional statement regarding oral argument in an appellant's or appellee's brief. The optional statement is limited to one page, which does not count toward the briefing page limit.

Rule 39. Oral Argument; Decision Without Argument

39.1 Right to Oral Argument. ~~Except as provided in 39.8, a~~ Any party who has filed a brief and who has timely requested oral argument may argue the case ~~to the court when the case is called for argument.~~

before a panel of three justices unless the court, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

~~39.8 Cases Advanced Without Oral Argument.~~ ~~In its discretion, the court of appeals may decide a case without oral argument if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal.~~

39.9~~8~~ Clerk's Notice. [no change to rule text]

Comment to 2008 changes: Rule 39 is amended to modify the procedures for determining whether oral argument will be heard in a particular case. The amended rule provides for oral argument unless the court determines it to be unnecessary. The rule lists four reasons for denying oral argument, modeled on Federal Rule of Appellate Procedure 34(a)(2); however, the members of the court need not agree on, and generally should not announce, a specific reason or reasons for declining oral argument.

Rule 41. Panel and En Banc Decision

41.1 Decision by Panel

(b) *When Panel Cannot Agree on Judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must designate another justice of the court to sit on the panel to consider the case, request the temporary assignment by the Chief Justice of the Supreme Court of a court of appeals justice from another court of appeals, a retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit on the panel to consider the case, or convene the court en banc to consider the case. The reconstituted panel or the en banc court may order the case reargued.

(c) *When Court Cannot Agree on Judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.2 Decision by En Banc Court

(b)*When En Banc Court Cannot Agree on Judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.3 Precedent in Transferred Cases. In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court. The court's opinion may state whether the outcome would have been different had the transferee court not been required to decide the case in accordance with the transferor court's precedent.

Comment to 2008 changes: Rules 41.1 and 41.2 are amended to reflect the 2003 legislative amendment adding subsection (h) to Government Code §74.003, which authorizes the Chief Justice of the Supreme Court to temporarily assign an active district court judge to hear a matter pending in an appellate court. The statutory provisions governing the assignment of judges to appellate courts are located in chapters 74 and 75 of the Government Code. Other minor changes are made for consistency.

New Rule 41.3 is added to require, in appellate cases transferred by the Supreme Court under Government Code §73.001 for docket equalization or other purposes, that the transferee court must generally resolve any conflict between the precedent of the transferor court and the precedent of the transferee court (or that of any other intermediate appellate court the transferee court otherwise would have followed) by following the precedent of the transferor court, unless it appears that the transferor court itself would not be bound by that precedent. The rule requires the transferee court to "stand in the shoes" of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred. However, the transferee court is not expected to follow the local rules of the transferor court or otherwise supplant its own local procedures with those of the transferor court.

Rule 47. Opinions, Publication, and Citation

47.2 Designation and Signing of Opinions; Participating Justices.

(a) *Civil and Criminal Cases.* A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court.

(b) *Criminal Cases.* In addition, each opinion and memorandum opinion in a criminal case must bear the notation "publish" or "do not publish" as determined - before the opinion is handed down-by a majority of the justices who participate in considering the case. Any party may move the appellate court to change the notation, but the court of appeals must not change the notation after the Court of Criminal Appeals has acted on any party's petition for discretionary review or other requests for relief. The Court of Criminal Appeals may, at any time, order that a "do not publish" notation be changed to "publish."

(c) *Civil Cases.* Opinions and memorandum opinions in civil cases issued on or after January 1, 2003 shall not be designated "do not publish."

47.7 Citation of Unpublished Opinions.

(a) *Criminal Cases.* Opinions and memorandum opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited with the notation, "(not designated for publication)."

(b) *Civil Cases.* Opinions and memorandum opinions designated "do not publish" under these rules by the court of appeals prior to January 1, 2003 have no precedential value but may be cited with the notation, "(not designated for publication)." If an opinion or memorandum opinion issued on or after that date is erroneously designated "do not pub-

lish," the erroneous designation will not affect the precedential value of the decision.

Comment to 2008 changes: Effective January 1, 2003, Rule 47 was amended to discontinue in civil cases, on a prospective basis, the practice of allowing courts of appeals to designate opinions as either "published" or "unpublished." Rule 47.7 was amended to eliminate the prior prohibition against citing unpublished opinions and to clarify that, in civil cases, only unpublished opinions issued prior to the 2003 amendment would lack precedential value, because following the 2003 amendment such cases were not to be designated either as published or unpublished. But the phrase "opinions not designated for publication," which was intended to apply only to opinions affirmatively designated "do not publish," could be misread as suggesting that all opinions in civil cases published after 2002 - none of which should be affirmatively designated for publication - lack precedential value. The 2008 amendments clarify that, with respect to civil cases, only opinions issued prior to the 2003 amendment and affirmatively designated "do not publish" should be considered "unpublished" cases lacking precedential value. The provisions governing citation of unpublished opinions in criminal cases are substantively unchanged; Rules 47.2 and 47.7 are amended to clarify that memorandum opinions are subject to those rules.

Rule 49. Motion ~~and Further~~ ~~Motion~~ for Rehearing and En Banc Reconsideration

49.1 Motion for Rehearing. A motion for rehearing may be filed within 15 days after the court of appeals' judgment or order is rendered. The motion must clearly state the points relied on for the rehearing. After a motion for rehearing is decided, another motion for rehearing may be filed within 15 days of the court's action only if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues an opinion in overruling a motion for rehearing.

~~49.5 Further Motion for Rehearing.~~ ~~After a motion for rehearing is decided, a further motion for rehearing may be filed within 15 days of the court's action if the court:~~

~~(a) modifies its judgment;~~

~~(b) vacates its judgment and renders a new judgment; or~~

~~(c) issues an opinion in overruling a motion for rehearing.~~

49.6~~5~~ Amendments. A motion for rehearing or a motion for en banc reconsideration may be amended as a matter of right anytime before the 15-day period allowed for filing the motion expires, and with leave of the court, anytime before the court of appeals decides the motion.

49.7~~6~~ En Banc Reconsideration. A party may file a motion for en banc reconsideration, as a separate motion, with or without filing a motion for rehearing, within 15 days after the court of appeals' judgment or order is rendered. Alternatively, a motion for en banc reconsideration may be filed by a party no later than 15 days after the overruling of the same party's last timely filed motion for rehearing. While the court has plenary power, as provided in Rule 19, a majority of the en banc court may, with or without a motion, order en banc reconsideration of a panel's decision. If a majority orders reconsideration, the panel's judgment or order does not become final, and the case will be resubmitted to the court for en banc review and disposition.

49.8~~7~~ Extension of Time. A court of appeals may extend the time for filing a motion for rehearing or a ~~further motion for rehearing~~ motion for en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

49.9~~8~~ Not Required for Review. A motion for rehearing is not required to preserve error and is not a prerequisite to filing:

(a) a motion for en banc reconsideration as provided by Rule 49.6;

(b) a petition for review in the Supreme Court; or

(c) a petition for discretionary review ~~in~~ to the Court of Criminal Appeals ~~nor is it required to preserve error~~.

49.10~~9~~ Length of Motion and Response. A motion or response must be no longer than 15 pages.

49.10 Relationship to Petition for Review. A party may not file a motion for rehearing in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or the court of appeals from ruling on the motion. If a motion for rehearing is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

49.11 Certificate of Conference Not Required. A certificate of conference is not required for a motion for rehearing or for a motion for en banc reconsideration of a panel's decision.

Comment to 2008 changes: Rule 49 is revised in several respects. Former Rule 49.5 is relocated to Rule 49.1, which omits the former rule's "further" motion language but retains its provisions limiting the circumstances in which another rehearing motion can be filed. Former Rule 49.7, now Rule 49.6, is amended to include procedures governing the filing a motion for en banc reconsideration. New Rule 49.10 consists of those provisions of former Rule 53.7(b) that address motions for rehearing; the provisions of Rule 53.7(b) that address petitions for review are retained. New Rule 49.11 mirrors Rule 10.1(a)(5)'s new provision exempting motions for rehearing and motions for en banc reconsideration from the certificate-of-conference requirement.

Rule 50. Reconsideration on Petition for Discretionary Review

Within 60 ~~30~~ days after a petition for discretionary review is ~~has been~~ filed with the clerk of the court of appeals that delivered the decision, ~~a majority of~~ the justices who participated in the decision may, as provided by subsection (a), ~~summarily~~ reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, that ~~the original~~ opinion or judgment is ~~must be~~ withdrawn and the modified or corrected opinion or judgment is ~~must be~~ substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

Rule 52. Original Proceedings

52.3 Form and Contents of Petition. ~~All factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated.~~ The petition must,

under appropriate headings and in the order here indicated, contain the following:

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(5) if the petition is filed in the Supreme Court after a petition requesting the same relief was filed in the court of appeals:

(D) the citation of the court's opinion ~~, if available, or a statement that the opinion was unpublished~~;

(g) *Statement of Facts.* The petition must state concisely and without argument the facts pertinent to the issues or points presented. Every statement of fact in the petition must be supported by citation to competent evidence included in ~~The statement must be supported by references to~~ the appendix or record.

(j) *Certification.* The person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

~~(j)~~(k) *Appendix.* [no change to rule text]

52.6 Length of Petition, Response, and Reply. Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Comment to 2008 changes: Rule 47 was amended effective January 1, 2003 to eliminate in civil cases, on a prospective basis, the former distinction between "published" and "unpublished" decisions. Rule 52.3(d)(5)(D) is now amended to recognize that an opinion in a civil appeal decided after 2002 should not be described as "unpublished" in the statement of the case even if the opinion was not published in the South Western Reporter, because Rule 47 no longer authorizes the courts of appeals to designate an opinion in a civil appeal either as "published" or "unpublished." If no South Western Reporter citation is available, a LEXIS or Westlaw citation may be provided.

Rule 52.3 is further amended to delete the requirement of verifying all factual statements by affidavit. Instead, the filer must certify that all factual statements are supported by citation to competent evidence in the appendix or record.

Rule 53. Petition for Review

53.2 Contents of Petition

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(8) the citation for the court of appeals' opinion~~, if available, or a statement that the opinion was unpublished~~; and

(9) the disposition of the case by the court of appeals, including the court's disposition of any motions for rehearing or motions for en banc reconsideration. If any motions for rehearing or motions for en banc reconsideration are pending in the court of appeals at the time the petition for review is filed, that information also must be included in the statement of the case.

53.7 Time and Place of Filing

(a) *Petition.* Unless the Supreme Court for good cause orders an earlier filing deadline, ~~T~~the petition must be filed with the Supreme Court within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or motion for en banc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing and all timely filed motions for en banc reconsideration.

(b) *Premature filing.* ~~A party may not file a motion for rehearing in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or the court of appeals from ruling on the motion. If a motion for rehearing is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.~~ A petition filed before the last ruling on all timely filed motions for rehearing and motions for en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or motion for en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review, as required by Rule 53.2(d)(9).

Comment to 2008 change: Rule 53.7(a) is amended to clarify that (1) the Supreme Court may shorten the time for filing a petition for review, and (2) the timely filing of a motion for en banc reconsideration tolls the commencement of the 45-day period for filing a petition for review until the motion is overruled. Rule 53.2(d)(9) is amended to require a party that prematurely files a petition for review to notify the Supreme Court of any panel rehearing or en banc reconsideration motions still pending in the court of appeals. Rule 53.7(b) is revised to reference this new requirement and to relocate to new Rule 49.10 those provisions governing motions for rehearing. Rule 53.2(d)(8) is amended to delete the outdated reference to unpublished opinions in civil cases, similar to the change made to Rule 52.3(d)(5)(D).

Rule 68. Discretionary Review With Petition

68.7. Court of Appeals Clerk's Duties

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c)~~(b)~~ *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within 60 ~~30~~ days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

~~**68.9 Reply**~~

~~The opposing party has 30 days after the timely filing of the petition in the Court of Criminal Appeals--unless additional time is allowed--to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing a reply has expired, the petition will be treated as submitted to the Court and ready for disposition.~~

Rule 70. Brief on the Merits

70.3 Brief Contents and Form. Briefs must comply with the requirements of Rule 38, except that they need not contain the appendix (Rule 38.1(j k)). Copies must be served as required by Rule 68.11.

71.3 Briefs. Briefs in a direct appeal should be prepared and filed in accordance with Rule 38, except that the brief need not contain an appendix (Rule 38.1(j k)), and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-200801384
Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: March 11, 2008

♦ ♦ ♦

Deep East Texas Council of Governments

Request for Proposals for Contractor Housing Rehabilitation Services

Overview

The Deep East Texas Council of Governments (DETCOG) is currently releasing bid packets to pre-qualified contractors to provide construction services for emergency repair and rehabilitation of owner-occupied housing units in support of the Hurricane Rita Disaster Relief Program. DETCOG anticipates releasing a minimum of 12 bid packets, each with a minimum of five properties per packet.

Contractors interested in qualifying to receive these bid packets can request a Request for Proposal Packet by contacting:

Holly Anderson, Project Manager

210 Premier Drive

Jasper, TX 75951

Phone: (409) 384-5704, ext 231

Fax: (409) 384-5390

Email: handerson@detcog.org

Contractors must be pre-qualified seven (7) days prior to a bid release in order to have their bids considered. Bid packets will be released on a weekly basis beginning Wednesday, March 5, 2008.

TRD-200801399
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: March 11, 2008

♦ ♦ ♦

Request for Proposals for Highway Information System

I. Overview

The Deep East Texas Council of Governments (DETCOG) is now accepting bids for our Highway Information System Project. Bid documents may be picked up at the DETCOG office on 210 Premier Drive, Jasper, Texas 75951 through Wednesday March 26, 2008 at 5:00 p.m.

II. Obtaining Full RFP and Submission Information

The Full RFP can be obtained at http:/detcog.org or by contacting:

Bobbie Stott

Purchasing Officer

Phone: (409) 384-5704 ext. 245

Fax: (409) 384-5390

Email: bstott@detcog.org

Submission is due to DETCOG no later than 3:00 p.m. on March 31, 2008.

TRD-200801394
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: March 11, 2008

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Request for Proposals for Interoperability Communications Project Gateway Antenna Enhancement Project

I. Overview

The Deep East Texas Council of Governments (DETCOG) is now accepting bids for our Interoperability Communications Project, for Gateway Antenna Enhancement Project. Bid documents may be picked up at the DETCOG office on 210 Premier Drive, Jasper, Texas 75951 through Wednesday March 26, 2008 at 5:00 p.m.

II. Obtaining Full RFP and Submission Information

The Full RFP can be obtained at http:/detcog.org or by contacting:

Bobbie Stott, Purchasing Officer

Phone (409) 384-5704, ext. 245

Fax (409) 384-5390

E-mail: bstott@detcog.org

Submission is due to DETCOG no later than 3:00 p.m. on March 31, 2008.

TRD-200801395
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: March 11, 2008

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Request for Proposals for Multi-Agency Coordination Center Enhancement Project

I. Overview.

The Deep East Texas Council of Governments (DETCOG) is now accepting bids for our Multi-Agency Coordination Center Enhancement Project. Bid documents may be picked up at the DETCOG office on 210 Premier Drive, Jasper, Texas 75951 through Wednesday March 26, 2008 at 5:00 p.m.

II. Obtaining Full RFP and Submission Information.

The Full RFP can be obtained at http:/detcog.org or by contacting:

Bobbie Stott, Purchasing Officer

Phone: (409) 384-5704 ext. 245

Fax: (409) 384-5390 Email: bstott@detcog.org

Submission is due to DETCOG no later than 3:00 p.m. on March 31, 2008.

TRD-200801397
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: March 11, 2008

♦ ♦ ♦

Request for Proposals for VHF Radio Equipment

I. Overview.

The Deep East Texas Council of Governments (DETCOG) is now accepting bids for our VHF Radio Equipment. Bid documents may be picked up at the DETCOG office on 210 Premier Drive, Jasper, Texas 75951 through Wednesday March 26, 2008 at 5:00 p.m.

II. Obtaining Full RFP and Submission Information.

The Full RFP can be obtained at http:/detcog.org or by contacting:

Bobbie Stott, Purchasing Officer

Phone: (409) 384-5704 ext. 245

Fax: (409) 384-5390

Email: bstott@detcog.org

Submission is due to DETCOG no later than 3:00 p.m. on March 31, 2008.

TRD-200801396
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: March 11, 2008

♦ ♦ ♦

Deep East Texas Local Workforce Development Board

Request for Proposals #08-242 Management and Operation of Child Care Services

Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking proposals from qualified organizations to provide the operation and management of child care services to eligible individuals through federal, state, and local funds.

The Deep East Texas Local Workforce Development Board plans, oversees and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine and Tyler Counties.

RFP release date: March 12, 2008

Bidder's Conference: 1:00 p.m., March 26, 2008 in the Board Meeting Room at 539 South Chestnut, Suite 300, Lufkin, Texas. Technical assistance will be limited to information at the Bidder's Conference.

Deadline for submission of proposals: 3:00 p.m., April 30, 2008

The RFP is available at www.detwork.org or requests for a copy of the RFP can be made to:

Chris Gaston, Procurement/Contract Manager

Deep East Texas Local Workforce Development Board, Inc.

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

Email: chris.gaston@twc.state.tx.us

Phone: (936) 639-8898 Fax: (936) 633-7491

TRD-200801410
Chris Gaston
Procurement/Contract Manager
Deep East Texas Local Workforce Development Board
Filed: March 12, 2008

♦ ♦ ♦

Texas Council for Developmental Disabilities

Intent to Award

The Texas Council for Developmental Disabilities (TCDD) announces its intent to award funds to The Arc of Texas for a project to support the development of microboards in Texas. TCDD expects to award funds for this project no earlier than 30 days from the date of this posting. Any organizations that believe they can provide similar activities for a better value are invited to **submit a proposal to TCDD no later than Monday, April 21, 2008.** Any and all proposals submitted that are judged as providing at least comparable value will be invited to submit a full workplan and budget as required by TCDD for review by an independent review panel process. The Council will make a final decision about the proposal offering the best value after considering recommendations from that review process. If no other proposals of similar value are received, TCDD will enter into final negotiations for a project with The Arc of Texas.

Background:

The Arc of Texas submitted a proposal to TCDD consistent with the Council's procedures for considering unsolicited proposals for activities that otherwise implement activities in the TCDD State Plan. The Arc of Texas - Real Life Program Microboards project was established in 2007 with the goal of providing an alternative method of addressing the planning and support needs of people with intellectual and developmental disabilities to enable them to live as they choose in the community while supporting the person-centered planning philosophy. It is believed to be the only program of its kind in Texas currently in operation. The Arc of Texas requested funds from TCDD to expand activities of its microboard program by providing assistance for the development and operation of microboards that become providers of services to individuals with intellectual or developmental disabilities. The Arc of Texas modeled its project after the Tennessee Microboard Association and estimates that Texas will have at least 80 non-profit microboard organizations, each comprised of 5-7 individuals who assist in determining services and supports needed for community living, by the end of the proposed five-year funding period. The Arc of Texas estimates that 30 of these microboards will become providers of HCS and/or CLASS waiver services. TCDD believes this to be a promising practice innovation that is consistent with two objectives in the current TCDD State Plan.

Terms and Funding:

The Arc of Texas microboard project proposal was reviewed and approved for funding by the Council pending the outcome of this notice of intent. The Council authorized funding not to exceed $115,000 per year for the first year, with decreasing amounts for years 2 through 5, with matching funds included per TCDD requirements.

For information regarding this announcement, please contact Patrice A. LeBlanc, Grants Management Director at (512) 437-5435 or email address: patrice.leblanc@tcdd.state.tx.us.

TRD-200801351

Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: March 6, 2008

♦ ♦ ♦

Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Act (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2008 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2008 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than October 31, 2008; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

The State of Texas (Texas Education Agency) has chosen to submit a 2008 State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at http://www.tea.state.tx.us/special.ed/eligdoc/index.html. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers (ESCs) and at the TEA Library (Ground Floor), 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of IDEA Coordination at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of IDEA Coordination, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by e-mail to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2008 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 16, 2008.

Further Information. For more information, contact the TEA Division of IDEA Coordination by mail at 1701 North Congress Avenue, Room 6-127, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by e-mail at sped@tea.state.tx.us.

TRD-200801406

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 12, 2008

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Request for Applications Concerning the Intensive Technology-Based Academic Intervention Pilot Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-110 from school districts, open-enrollment charter schools, or shared services arrangements of school districts and/or open-enrollment charter schools to provide intensive technology-based supplementary instruction to students in Grades 9-12 identified as being at risk of dropping out of school. A school district or open-enrollment charter school is eligible to apply for funding if the school district or open-enrollment charter school exhibited during each of the three preceding school years characteristics that strongly correlate with high dropout rates, as indicated by an enrollment of at least 50 percent economically disadvantaged students for the preceding three school years. In addition, a school district or open-enrollment charter school must have identified at least 50 percent of students enrolled in Grades 9-12 as being at risk of dropping out of school for the 2006-2007 school year. The eligibility list will be provided along with the RFA on the TEA Grant Opportunities website at http://burleson.tea.state.tx.us/GrantOpportunities/forms.

Description. The purpose of this grant program is to establish pilot programs to provide intensive technology-based supplementary instruction in English, mathematics, science, or social studies to benefit students in Grades 9-12 identified as being at risk of dropping out of school. Instructional techniques and technology used by a district or open-enrollment charter school under this section must be based on the best available research regarding college and workforce readiness, as determined by the High School Completion and Success Initiative Council established under the Texas Education Code, Chapter 39, Subchapter L.

A program supported by a grant under this RFA to provide intensive technology-based supplementary instruction at a campus may: (1) include comprehensive course plans and teacher guides that are aligned with one or more subjects of the foundation curriculum described by TEC, §28.002(a)(1); (2) include technology-based supplementary instruction; (3) include training, professional development, and mentoring for teachers; (4) provide students individual access to technology-based supplementary instruction at least 90 minutes each week; (5) demonstrate significant effectiveness in high schools serving students identified as being at risk of dropping out of school, as described in TEC, §29.081(d); (6) be selected in consultation with the teachers at the affected campus; and (7) be implemented in partnership with institutions of higher education.

Districts selected for the pilot program are entitled to receive state grant funds in an amount not to exceed $50 for each participating student in the program. As a condition of receiving a state grant, a district must contribute other federal, state, or local matching funds, including private donations, of at least $50 for each student participating in the program.

Dates of Project. The Intensive Technology-Based Academic Intervention Pilot Program will be implemented during the 2008-2009 and 2009-2010 school years. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than May 31, 2010.

Project Amount. A total of $3 million is available for this grant program. Project funding in any subsequent grant period will be based on

satisfactory progress during the grant period and on budget approval by the commissioner of education and the state legislature.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the pilot project evaluation.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-08-110 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, May 20, 2008, to be eligible to be considered for funding.

TRD-200801407
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 12, 2008

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Commission on State Emergency Communications

Notice of Contract Award

This notice of contract award is filed pursuant to Texas Government Code, §2254.030. The Request for Proposal was published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 991).

Description of Activities of Consultant:

The Commission on State Emergency Communications (CSEC) has entered into a major consulting services contract for the following services:

Contractor will provide consulting services to assist CSEC in planning for the phased-in deployment of a Next Generation 9-1-1 (NG9-1-1) system. The transition to a NG9-1-1 system will be an extensive, multi-year effort. CSEC intends to develop a NG9-1-1 Master Plan to chart the course of CSEC's activities based, in part, on consultant's services pursuant to the contract.

Name and Business Address of Consultant:

The consultant engaged by the CSEC for these services is L. Robert Kimball & Associates, Inc., 615 W. Highland Avenue, P.O. Box 1000, Ebensberg, PA 15931.

Total Value of the Contract and Beginning and Ending Dates:

The total value of the contract is $199,650.00. The term of the contract began on March 1, 2008, and will terminate on December 31, 2008, or upon completion of consultant's services, whichever occurs first, unless terminated earlier pursuant to the terms of the contract.

Date on Which Report Is Due:

The final report must be submitted to CSEC no later than July 31, 2008.

For information regarding this publication, contact Brian Millington, Commission on State Emergency Communications, 333 Guadalupe, Suite 2-212, Austin, Texas 78701. E-mail inquiries should be sent to csecinfo@csec.state.tx.us.

TRD-200801417
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: March 12, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 21, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512)239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 21, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforce-

ment coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Joe Johnson dba B & J Sand and Gravel; DOCKET NUMBER: 2007-1754-WQ-E; IDENTIFIER: RN105136311; LOCATION: Llano County, Texas; TYPE OF FACILITY: sand and gravel pit; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Gulf Chemical & Metallurgical Corporation; DOCKET NUMBER: 2007-1631-IHW-E; IDENTIFIER: RN100210129; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: metal processing plant; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the shipment and delivery of industrial hazardous waste (IHW) to an unauthorized facility; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Itasca Landfill TX, LP; DOCKET NUMBER: 2007-1695-IHW-E; IDENTIFIER: RN100213412; LOCATION: Hill County, Texas; TYPE OF FACILITY: type 1 municipal solid waste landfill; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of IHW at the facility; PENALTY: $8,625; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Koyote Ranch-Bandera Unit L.P. dba Koyote Mercantile; DOCKET NUMBER: 2006-0641-PST-E; IDENTIFIER: RN104281241; LOCATION: Medina, Bandera County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Lee-Var, Inc. dba Palmer of Texas; DOCKET NUMBER: 2007-1724-AIR-E; IDENTIFIER: RN100213594; LOCATION: Andrews, Andrews County, Texas; TYPE OF FACILITY: tank manufacturing; RULE VIOLATED: 30 TAC §101.20(2) and §122.143(4), 40 CFR §63.5805(b), Federal Operating Permit (FOP) Number 2704, Special Terms and Conditions 1D, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with emissions standards for hazardous air pollutants; PENALTY: $19,050; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(6) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2007-1497-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), and §122.143(4), New Source Review (NSR) Flexible Permit Number 8404, Special Condition (SC) 9 and General Condition (GC) 8, FOP O-01386, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to comply with the permitted emissions limits for nitrogen oxide; 30 TAC §116.115(b)(2)(F) and §122.143(4), NSR Air Permit Number 6056, GC 8, FOP O-01386, GTC, and THSC, §382.085(b), by failing to comply with permitted emissions limits for particulate matter; 30 TAC §122.143(4), FOP O-01386, SC 3.B.(iii.), and THSC, §382.085(b), by failing to perform quarterly opacity observations of all stationary vents; 30 TAC §§101.20(2), 113.780, 116.715(a), and 122.143(4), NSR Flexible Permit Number 8404, SC 14, FOP O-01386, GTC and SC 16.A., 40 CFR §63.1567(a)(2), and THSC, §382.085(b), by failing to maintain the scrubbing solution at or above a pH of seven; 30 TAC §§101.20(2), 113.780, 116.715(a), and 122.143(4), NSR Flexible Permit Number 8404, SC 14, FOP O-01386, GTC and SC 16.A., 40 CFR §63.1567(a)(3) and (c)(1), and THSC, §382.085(b), by failing to conduct daily caustic hydrogen chloride (HC1) testing at the CRU4 Caustic HC1 Scrubber and operate it in accordance with the operation, maintenance, and monitoring plan; 30 TAC §115.244(1) and §122.143(4), FOP O-01386, GTC, and THSC, §382.085(b), by failing to perform part or all of daily Stage II Vapor Recovery System inspections; 30 TAC §§101.20(1) and (2), 113.340, 115.352(4), 116.715(a), and 122.143(4), NSR Flexible Permit Number 8404, SC 14, 20, and 23, FOP O-01386, GTC, 40 CFR §60.592(a) and §63.648(a), and THSC, §382.085(b), by failing to properly seal four leaking open-ended lines in volatile organic compound service with a cap, plug, or blind flange; 30 TAC §§101.20(1), 116.715(a), and 122.143(4), NSR Flexible Permit Number 8404, SC 23, FOP O-01386, 40 CFR §60.18(f)(2), and THSC, §382.085(b), by failing to monitor the delayed coking unit flare's pilot flame; and 30 TAC §§122.143(4), 122.145(2)(A), 122.146(1), and 122.146(5)(C)(v), FOP O-01386, GTC, and THSC, §382.085(b), by failing to report the occurrence of deviations in semi-annual deviation reports and to accurately certify compliance in annual compliance certifications; PENALTY: $225,338; Supplemental Environmental Project (SEP) offset amount of $90,135 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Nutri-Feeds, Inc.; DOCKET NUMBER: 2007-1838-AIR-E; IDENTIFIER: RN101629947; LOCATION: Deaf Smith County, Texas; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to take necessary measures to prevent the release of odors which are in such concentration and of such duration as are or may be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain proper air quality authorization to construct and operate a facility which emits air contaminants into the air; PENALTY: $4,950; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Oxid L.P.; DOCKET NUMBER: 2007-1781-IWD-E; IDENTIFIER: RN100210350; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical processing; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 02102, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for oil and grease and chemical oxygen demand; and 30 TAC §305.125(1) and TPDES Permit Number 02102, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $7,040; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Prime Mart Inc.; DOCKET NUMBER: 2007-1814-MLM-E; IDENTIFIER: RN102010493; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail

sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection; 30 TAC §334.8(c)(4)(A)(vii), (c)(5)(B)(ii), and (c)(5)(D)(ii), by failing to renew a delivery certificate by timely and proper submission of a completed underground storage tank (UST) registration and self-certification form; 30 TAC 334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.10(b) and §334.50(e)(2)(C), by failing to maintain records of the results for all manual and/or automatic methods of monitoring for releases; and 30 TAC §213.5(d), by failing to comply with the continuous interstitial monitoring requirements for the UST system over the Edwards Aquifer; PENALTY: $7,800; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: George Dreher dba Pumpjacks, Etc.; DOCKET NUMBER: 2007-1800-AIR-E; IDENTIFIER: RN104996855; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: oil field equipment repair yard; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain proper authorization to conduct surface coating operations; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent outdoor painting operations overspray from impacting adjacent property; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(11) COMPANY: City of Rising Star; DOCKET NUMBER: 2007-1728-WQ-E; IDENTIFIER: RN103138137; LOCATION: Rising Star, Eastland County, Texas; TYPE OF FACILITY: wastewater collection line; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of raw wastewater; and the Code, §26.039(b), by failing to timely notify the TCEQ Regional Office of an unauthorized discharge; PENALTY: $2,700; Supplemental Environmental Project (SEP) offset amount of $2,160 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: SB All Seasons, Inc.; DOCKET NUMBER: 2008-0085-PST-E; IDENTIFIER: RN102314002; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of The Colony; DOCKET NUMBER: 2007-1622-MWD-E; IDENTIFIER: RN102080157; LOCATION: The Colony, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011570001, Interim II Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total ammonia, flow, and fecal coliform; PENALTY: $51,000; Supplemental Environmental Project (SEP) offset amount of $51,000 applied to performing an erosion control project along the Heron Cove outfall area above Lake Lewisville; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2007-1756-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 834, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.715(a), and 117.310(c)(1), Flexible Permit Number 20432 and PSD-TX-994, SC I-1, and THSC, §382.085(b), by failing to comply with the emissions limits of 0.15 pounds per hour of carbon monoxide; and 30 TAC §116.115(c), NSR Permit Number 18569, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $44,450; Supplemental Environmental Project (SEP) offset amount of $17,780 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: USA IDOL Inc dba Stop & Go 6; DOCKET NUMBER: 2008-0248-PST-E; IDENTIFIER: RN105370274; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200801385
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 11, 2008

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Enforcement Orders

An agreed order was entered regarding Matbon, Inc., Docket No. 2005-0106-MLM-E on February 29, 2008 assessing $13,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney, at (210) 490-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Charles D. Hodges dba North Western Excavation and Dirt Landfill, LLP, Docket No. 2005-1040-MSW-E on February 29, 2008 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Adam J. Wood dba Hoover Valley Country Store, Docket No. 2005-1188-PST-E on February 29, 2008 assessing $12,330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney, at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tariq Shahzad Enterprises, Inc. dba Pakco 4, Docket No. 2005-1342-PST-E on February 29, 2008 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney, at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Plain-O-Gas, Inc. dba Fina, Docket No. 2006-0321-PST-E on February 29, 2008 assessing $23,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Collinsville, Docket No. 2006-0332-MWD-E on February 29, 2008 assessing $24,955 in administrative penalties with $4,991 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deborah L. Godfrey Pilarcik dba Comet Cleaners, Docket No. 2006-0893-DCL-E on February 29, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney, at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nome, Docket No. 2006-1393-PWS-E on February 29, 2008 assessing $3,135 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W. Silver, Inc., Docket No. 2006-1765-IHW-E on February 29, 2008 assessing $3,696 in administrative penalties with $739 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0068, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Qusra Corporation dba Lone Star Superette, Docket No. 2006-1769-PST-E on February 29, 2008 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Larry Smith, Docket No. 2006-1867-LII-E on February 29, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney, at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enrique Valenzuela, Docket No. 2006-1999-OSS-E on February 29, 2008 assessing $4,462 in administrative penalties with $892 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (210) 403-4078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M R K Investment Corp. dba El Primero Training Center, Docket No. 2007-0114-PWS-E on February 29, 2008 assessing $600 in administrative penalties with $120 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator, at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2007-0209-AIR-E on February 29, 2008 assessing $76,450 in administrative penalties with $15,290 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bruce Coleman Siegel, Docket No. 2007-0233-LII-E on February 29, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney, at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Malik Enterprises, Inc. dba KC 2 Grocery Store, Docket No. 2007-0305-PST-E on February 29, 2008 assessing $3,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Terry Brown, Docket No. 2007-0339-LII-E on February 29, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Veldhuizen dba Veldhuizen Dairy Farm, Docket No. 2007-0549-AGR-E on February 29, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2007-0670-AIR-E on February 29, 2008 assessing $325,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Doreen A. Swadley dba Green-Bell, Docket No. 2007-0725-LII-E on February 29, 2008 assessing $551 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-0815-AIR-E on February 29, 2008 assessing $32,725 in administrative penalties with $6,545 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taylor Petroleum Companies, Inc., Docket No. 2007-0834-PWS-E on February 29, 2008 assessing $2,788 in administrative penalties with $557 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator, at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lorenzo Hernandez, Docket No. 2007-0900-PST-E on February 29, 2008 assessing $38,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Nut Company, Docket No. 2007-0924-IWD-E on February 29, 2008 assessing $18,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paducah, Docket No. 2007-0927-PWS-E on February 29, 2008 assessing $3,097 in administrative penalties with $619 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator, at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2007-0940-AIR-E on February 29, 2008 assessing $99,666 in administrative penalties with $19,933 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-0993-AIR-E on February 29, 2008 assessing $44,361 in administrative penalties with $8,872 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Sinclair, Enforcement Coordinator, at (512) 239-2171, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-1004-AIR-E on February 29, 2008 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barker Development Company, LLC, Docket No. 2007-1055-WQ-E on February 29, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Frankston, Docket No. 2007-1076-MWD-E on February 29, 2008 assessing $9,840 in administrative penalties with $1,968 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tapia Dairy #3, L.L.C., Docket No. 2007-1077-MLM-E on February 29, 2008 assessing $16,640 in administrative penalties with $3,328 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2007-1096-AIR-E on February 29, 2008 assessing $13,884 in administrative penalties with $2,776 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matagorda Waste Disposal and Water Supply Corporation, Docket No. 2007-1124-PWS-E on February 29, 2008 assessing $780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martha Gallison dba Mt. Houston Tire Disposal, Docket No. 2007-1184-MSW-E on February 29, 2008 assessing $5,940 in administrative penalties with $1,188 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chris Schober dba Schober Trucking, Docket No. 2007-1205-WQ-E on February 29, 2008 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Plastics Corporation, Texas, Docket No. 2007-1227-AIR-E on February 29, 2008 assessing $12,350 in administrative penalties with $2,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Forest Hill, Docket No. 2007-1240-PWS-E on February 29, 2008 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gruene Rapids Condominiums, LLC, Docket No. 2007-1258-EAQ-E on February 29, 2008 assessing $25,500 in administrative penalties with $5,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A R H Enterprises, Inc. dba R H Food Mart, Docket No. 2007-1261-PST-E on February 29, 2008 assessing $8,300 in administrative penalties with $1,660 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Crushed Stone, Inc., Docket No. 2007-1305-WQ-E on February 29, 2008 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Earth Haulers, Inc., Docket No. 2007-1307-WQ-E on February 29, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2007-1308-AIR-E on February 29, 2008 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding F&K Face, L.P., Docket No. 2007-1310-WQ-E on February 29, 2008 assessing $5,202 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator, at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elite Computer Consultants, L.P. dba Ed Lou Mobile Home Park, Docket No. 2007-1324-MWD-E on February 29, 2008 assessing $4,960 in administrative penalties with $992 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clint Independent School District, Docket No. 2007-1327-MWD-E on February 29, 2008 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve Williams dba Axis Demolition & Excavating, Docket No. 2007-1332-MSW-E on February 29, 2008 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Ray Cavitt dba Don's Wrecker Service, Docket No. 2007-1350-PST-E on February 29, 2008 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator, at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Equipment Company, LC dba Superior Crushed Stone, Docket No. 2007-1371-EAQ-E on February 29, 2008 assessing $3,410 in administrative penalties with $682 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syed N. Hyder, Docket No. 2007-1408-MWD-E on February 29, 2008 assessing $41,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2007-1411-AIR-E on February 29, 2008 assessing $3,950 in administrative penalties with $790 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Georgia-Pacific Chemicals LLC, Docket No. 2007-1415-AIR-E on February 29, 2008 assessing $4,690 in administrative penalties with $938 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signal International Texas, L.P., Docket No. 2007-1428-AIR-E on February 29, 2008 assessing $8,600 in administrative penalties with $1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Sinclair, Enforcement Coordinator, at (512) 239-2171, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Copper Industries, Inc., Docket No. 2007-1434-AIR-E on February 29, 2008 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River Authority of Texas, Docket No. 2007-1441-PWS-E on February 29, 2008 assessing $7,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Building Products, Inc., Docket No. 2007-1466-AIR-E on February 29, 2008 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Child Inc., Docket No. 2007-1474-PWS-E on February 29, 2008 assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ezekiel L. Holloway dba Hill River Country Estates, Docket No. 2007-1484-PWS-E on February 29, 2008 assessing $856 in administrative penalties with $171 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James & Vickie Enterprises, Inc. dba James Stuart Construction, Docket No. 2007-1495-MSW-E on February 29, 2008 assessing $2,156 in administrative penalties with $431 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator, at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dixie Chemical Company, Inc., Docket No. 2007-1542-AIR-E on February 29, 2008 assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator, at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harmony Independent School District, Docket No. 2007-1556-MWD-E on February 29, 2008 assessing $4,560 in administrative penalties with $912 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Griffith dba East Texas Core Suppliers, Docket No. 2007-1589-MSW-E on February 29, 2008 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator, at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pharr, Docket No. 2007-1623-MWD-E on February 29, 2008 assessing $2,275 in administrative penalties with $455 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rochelle Water Supply Corporation, Docket No. 2007-1750-PWS-E on February 29, 2008 assessing $655 in administrative penalties with $131 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerry L. McClung dba J L Backhoe Service, Docket No. 2007-1763-SLG-E on February 29, 2008 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Fort Bend Oil Corporation dba Handi Plus 369, Docket No. 2006-1526-PST-E on February 29, 2008 assessing $1,757 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jared Morris dba Sportsman Center, Docket No. 2007-1975-PST-E on February 29, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gary Valdez, Docket No. 2007-1893-WOC-E on February 29, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Hamilton Hill Water Supply Corporation, Docket No. 2007-1491-PWS-E on February 29, 2008 assessing $535 in administrative penalties with $107 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Nick Nikah, Docket No. 2006-0774-LII-E on March 3, 2008, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200801413
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2008

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Invitation to Develop Municipal Solid Waste (MSW) Supervisor Training

On September 26, 2007 the Municipal Solid Waste Supervisor rules were revised. The rules now specify which type of supervisor's license is required for an individual to supervise a MSW facility. The new rules affect the training necessary to become a licensed supervisor of MSW facilities; therefore, MSW supervisor training programs must also be revised.

TCEQ is Seeking Training Providers

TCEQ is seeking training providers to develop training courses based on the new curriculum guidance documents for MSW training. The training must be developed according to the TCEQ rules, the regulatory guidance document RG - 373 (Revised December 2007), *Approval of Training for Occupational Licensing*, and the curriculum guidance documents. The following webpages provide information for the development of this training:

http://www.tceq.state.tx.us/compliance/compliance_support/trainers/ad-grps/developing_msw_training.html

http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/trainers/approval/rg-373.pdf

http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=30

The training for MSW supervisors must be developed by May 9, 2008. Please let us know if you are interested in developing training materials for MSW supervisors either by calling (512) 239-0178 or sending an e-mail to *licenses@tceq.state.tx.us.*

TRD-200801390
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 11, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 21, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 21, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Brazosport Equipment & Rental, Inc.; DOCKET NUMBER: 1999-1482-MSW-E; TCEQ ID NUMBERS: TCEQ Unauthorized Municipal Solid Waste (MSW) Site Number 455120017 and RN103045860; LOCATION: approximately 0.9 miles southeast of the intersection of Farm-to-Market (FM) Road 523 and State Highway 332, Oyster Creek, Brazoria County, Texas; TYPE OF FACILITY: unauthorized MSW site; RULES VIOLATED: 30 TAC §330.5(c), by failing to obtain authorization for disposing of MSW; PENALTY: $5,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: City of Del Rio; DOCKET NUMBER: 2007-0696-PWS-E; TCEQ ID NUMBER: RN101215978; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.44(d)(2) and TCEQ Agreed Order, Docket Number 2005-1777-PWS-E, IV. Ordering Provisions 2.a. and 2.b., by failing to acquire plan approval by the executive director for service connections that require booster pumps taking suction from the PWS supply lines; 30 TAC §290.46(m), by failing to initiate a maintenance program to maintain the general appearance of the system's facilities and proper operation of the system's equipment; 30 TAC §290.41(d)(4), by failing to provide the source water intake with an intruder-resistant fence; 30 TAC §290.111(b)(1)(B), by failing to meet site-specific performance standards approved by the executive director for a membrane facility; 30 TAC §290.46(f)(4)(A), by failing to submit additional documentation that the executive director may require to determine compliance; and 30 TAC §205.6 and Texas Water Code (TWC), §5.702, by failing to pay the general permit storm water fee (Financial Administration Account Number 20003966) for calendar year 2007; PENALTY: $2,448; Supplemental Environmental Project offset amount of $2,448 applied to Texas Association of Resource Conservation & Development Areas, Inc. Water or Wastewater

Assistance; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(3) COMPANY: David D. Smith Construction, Inc.; DOCKET NUMBER: 2006-2175-MSW-E; TCEQ ID NUMBER: RN105084453; LOCATION: 2581 FM 2657, Copperas Cove, Lampasas County, Texas; TYPE OF FACILITY: trucking business that transports solid waste within the State of Texas; RULES VIOLATED: 30 TAC §330.15(c) (formerly 30 TAC §330.5(a)), by failing to prevent the transportation of municipal non-hazardous solid waste for disposal at an unauthorized site; PENALTY: $18,525; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Gary Gene Crupper; DOCKET NUMBER: 2006-1443-AIR-E; TCEQ ID NUMBER: RN104943642; LOCATION: 4505 Cattleguard Court, Hood County, Texas; TYPE OF FACILITY: private residence; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the prohibition of outdoor burning; PENALTY: $1,050; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Jarrod Meyer; DOCKET NUMBER: 2005-1928-LII-E; TCEQ ID NUMBER: RN104786652; LOCATION: 6038 Whispering Lane, Tyler, Smith County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $625; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Lorraine Donaldson; DOCKET NUMBER: 2006-2173-MSW-E; TCEQ ID NUMBER: RN104026737; LOCATION: 5401 Bunny Trail Road, Killeen, Bell County, Texas; TYPE OF FACILITY: unauthorized MSW site; RULES VIOLATED: 30 TAC §330.15(c) (formerly 30 TAC §330.5(a)), by failing to prevent the unauthorized disposal of municipal non-hazardous solid waste at an unauthorized site; PENALTY: $19,760; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: New Progress Water Supply Corporation dba: Enchanted Oaks Subdivision, Spring Valley Estates, Highland Lakes Subdivision, and Ponderosa Hills Subdivision; DOCKET NUMBER: 2006-1037-PWS-E; TCEQ ID NUMBERS: RN101651578, RN101230712, RN101245413, and RN101654317; LOCATIONS: 161 Enchanted Oaks Court, Hudson Oaks; FM Road 730, between Weatherford and Azle; at the intersection of Highway 171 and FM Road 3450, Weatherford; and at the intersection of Highway 171 and Highland Lake Drive, Weatherford, Parker County, Texas; TYPE OF FACILITY: PWS systems; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate a program of maintenance and housekeeping practices that ensures good working conditions and general appearance of the facilities and equipment at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.41(c)(1)(F) and THSC, §341.0315(c), by failing to secure sanitary easements covering that portion of the land within 150 feet of the wells at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.41(c)(3)(A) and THSC, §341.035(c), by failing to submit to the commission's water utilities section a copy of the well completion data at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.121(a) and THSC, §341.035(c), by failing to develop and maintain a chemical and microbiological monitoring plan and by failing to make those plans available for review by agency personnel at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.46(n) and THSC, §341.035(c), by failing to provide a map of each distribution system to help locate valves and mains in the event of an emergency at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.43(c)(1) - (3), by failing to provide vent openings on the ground storage tanks (GSTs) with a 16-mesh or finer corrosion-resistant screening, by failing to provide the GSTs with a properly designed roof access opening, by failing to lock the roof hatches, and by failing to provide proper overflow on the GSTs at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §291.41(c)(3)(O), by failing to provide a properly constructed intruder-resistant fence around the well sites at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.41(c)(3(N), by failing to provide an operable flowmeter on the well discharge lines at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.42(j), by failing to ensure that all chemicals used in treatment of water supplied by the PWSs conformed to American National Standards Institute/National Sanitation Foundation Standard 60 for direct additives or Standard 61 for indirect additives at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.46(m)(1), by failing to conduct and record the results of annual inspections for the GSTs at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.110(c)(5)(A), by failing to test and record, at least once every seven days, the chlorine residual from various locations within the distribution system at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.42(l), by failing to compile a plant operations manual and to keep it up-to-date for operator review and reference at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.43(c)(4), by failing to provide a water level indicator on the GSTs at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.46(m)(1)(B), by failing to conduct and record the results of annual inspections for the pressure tanks at Enchanted Oaks, Spring Valley, Highland Lakes, and Ponderosa Hills; 30 TAC §290.41(c)(3)(K), by failing to ensure that the well heads were sealed with a gasket or sealing compound at Enchanted Oaks, Highland Lakes, and Ponderosa Hills; 30 TAC §341.036(a), by failing to post a legible sign displaying the name of the water supply and an emergency telephone number where a responsible official can be contacted at each production, treatment, and storage facility at Enchanted Oaks, Spring Valley, and Ponderosa Hills; 30 TAC §288.20, by failing to develop and retain a drought contingency plan for the water systems and by failing to have the plan available for review by agency personnel at Enchanted Oaks and Spring Valley; 30 TAC §290.46(m)(4), by failing to ensure that all water storage facilities and appurtenances are in a watertight condition at Enchanted Oaks and Spring Valley; 30 TAC §290.46(j), by failing to issue a customer service inspection certificate prior to providing continuous water service to new construction and on existing service at Enchanted Oaks and Spring Valley; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gallons per minute (gpm) per connection at each pump station or pressure plane at Enchanted Oaks and Spring Valley; 30 TAC §290.46(i) and THSC, §341.035(c), by failing to adopt a plumbing ordinance, regulation, or service agreement with provisions for proper enforcement at Enchanted Oaks and Spring Valley; 30 TAC §290.39(j) and THSC, §341.035(c), by failing to submit for approval

the plans prior to construction of service pumps at Enchanted Oaks and Spring Valley; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Numbers 91840088 (Enchanted Oaks) and 91840089 (Spring Valley); 30 TAC §290.41(c)(3)(J) and THSC, §341.0315(a), by failing to ensure a concrete sealing block around the well casing that extends a minimum of three feet in all directions at Spring Valley and Highland Lakes; 30 TAC §290.41(c)(3)(M), by failing to maintain an operable sampling tap on the well discharge to facilitate the collections of samples for chemical and bacteriological analysis directly from the well at Spring Valley and Highland Lakes; 30 TAC §290.46(1), by failing to flush all dead end mains monthly at Highland Lakes and Ponderosa Hills; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gpm per connection at Enchanted Oaks; 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection at Enchanted Oaks; 30 TAC §290.43(d)(3) and THSC, §341.0315(a), by failing to provide air injection lines with filters or other devices to prevent compressor lubricants and other contaminants from entering the pressure tanks at Enchanted Oaks; 30 TAC §290.43(d)(2), by failing to provide pressure release devices on the pressure tank at Enchanted Oaks; 30 TAC §290.46(v), by failing to install all electrical wiring in compliance with local or national electrical codes at Enchanted Oaks; 30 TAC §290.43(c) and THSC, §341.0315(a), by failing to ensure that all potable water storage facilities are covered, designed, fabricated, erected, tested, and disinfected in strict accordance with American Water Works Association standards at Enchanted Oaks; 30 TAC §290.110(b)(4) and THSC, §341.033(d), by failing to maintain a free chlorine residual of at least 0.2 milligrams per liter free chlorine or 0.5 milligrams per liter chloramine at Spring Valley; 30 TAC §290.46(m)(1)(A), by failing to maintain the GST's roof at Spring Valley; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information, disinfection information, microbiological sampling results, and a chemical analysis report of a representative sample of water from the well on file for as long as the well is in service at Highland Lakes; 30 TAC §290.43(c)(5), by failing to locate the GST inlet and outlet connections so as to prevent short circuiting or stagnation of water at Highland Lakes; 30 TAC §290.41(c)(3)(B) and (J) and THSC, §341.0315(a), by failing to ensure that the well casing extends a minimum of 18 inches above the finished floor of the pump room or natural ground surface, and a minimum of one inch above the sealing block or pump motor foundation when provided at Ponderosa Hills; and 30 TAC §290.46(u) and THSC, §341.0315(a), by failing to plug an abandoned well or test in accordance with 16 TAC §76.1004 at Ponderosa Hills; PENALTY: $22,745; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Thomas Steel Drums, Inc.; DOCKET NUMBER: 2007-0515-MLM-E; TCEQ ID NUMBER: RN100688738; LOCATION: 2517 Northeast 35th Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: steel drum recycling facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to dispose of hazardous waste at an authorized facility; 30 TAC §335.6(c), by failing to maintain accurate information on the facility's Notice of Registration and by failing to have a waste code for one waste stream generated by the facility; and 30 TAC §116.115(c) and §335.2(b), THSC, §382.085(b), and Air Permit Number 49060, Special Condition 14, by failing to operate the facility as represented in the permit application and by failing to properly dispose of industrial solid waste; PENALTY: $13,500; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801387
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 11, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 21, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 21, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Angela Young dba Young's One Stop; DOCKET NUMBER: 2004-2055-PST-E; TCEQ ID NUMBER: RN102225752; LOCATION: 195 Highway 155, Avinger, Cass County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of her petroleum underground storage tanks (USTs) at her facility; PENALTY: $3,150; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Asif Dhuka dba Neighborhood Store 2; DOCKET NUMBER: 2003-1191-PST-E; TCEQ ID NUMBER: RN102254786; LOCATION: 700 North Cuernavaca, Austin, Travis County, Texas;

TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to ensure that a delivery certificate is renewed by a timely and proper submission of a new UST Registration and Self-Certification Form to the TCEQ; 30 TAC §334.8(c)(5)(A)(i) and Texas Water Code (TWC), §26.3467, by failing to make available to any common carrier a valid, current, delivery certificate prior to accepting delivery of a regulated substance into the facility's USTs; and 30 TAC §334.10(b), by failing to make records available for release detection, inventory control, and financial assurance; PENALTY: $3,000; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Derdeyn/Ford, Inc. dba Tejas Village; DOCKET NUMBER: 2007-1372-MLM-E; TCEQ ID NUMBER: RN102684339; LOCATION: 509 Tejas Road, Jefferson, Marion County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; 30 TAC §290.42(e)(5), by failing to properly seal the hypochlorination solution container to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.42(1), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a water level indicator; 30 TAC §290.43(d)(2), by failing to provide the pressure tank with a pressure release device; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence to protect the facility's water storage tank and pressure tank; 30 TAC §290.46(d)(2)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a minimum disinfectant residual of at least 0.2 milligrams per liter of free chorine throughout the distribution system at all times; 30 TAC §290.46(f)(3)(A)(i)(III) and (iii), by failing to provide records of complaints and records of treatment chemicals used weekly; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water system's pressure tank; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the ground storage tank; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter once every three years; 30 TAC §290.46(t), by failing to post a legible sign that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.45(b)(1)(B)(iv) and (c)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection for the 25 community connections and 10 gallons per unit for the one noncommunity transient connection serving 40 noncommunity transient connections; 30 TAC §290.43(c)(3), by failing to provide on the overflow pipe on the ground storage tank a gravity-hinged and weighted cover that has a good mechanical seal when closed in order to prevent the possible entrance of insects or other contaminants into the water supply; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to operate the facility at all times under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.45(b)(1)(B)(ii), (c)(1)(B)(ii), and (d)(2)(B)(ii) and THSC, §341.0315(c), by failing to provide a minimum ground storage capacity of 200 gallons per connection for the 25 community connections, 35 gpm per connection for the one noncommunity transient connection serving 40 noncommunity transient connections, and 50% of the maximum daily demand for the 50-seat restaurant; 30 TAC §288.20(a) and §288.30(5)(B), by failing to provide a copy of an adopted drought contingency plan; and TWC, §26.0135(h) and §5.705, by failing to pay consolidated water quality fees, including late fees, for TCEQ Financial Administration Account Numbers 23002690 and 91580002 for Fiscal Years 2005-2007; PENALTY: $5,647; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: John Paul Dodson and William Dodson; DOCKET NUMBER: 2007-0585-PST-E; TCEQ ID NUMBER: RN101872133; LOCATION: 321 South Poplar Street, Kermit, Winkler County, Texas; TYPE OF FACILITY: former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $7,875; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(5) COMPANY: Kirby & Kirby Oil Company, Inc.; DOCKET NUMBER: 2006-1951-PST-E; TCEQ ID NUMBER: RN102063088; LOCATIONS: 6500 South Broadway Avenue, Tyler, Smith County and 300 West Pinecrest Drive, Marshall, Harrison County, Texas; TYPE OF FACILITIES: two convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b) and TCEQ Agreed Order Docket Number 2005-0404-PST-E, Ordering Provision Number 2, by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $18,200; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200801388
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 11, 2008

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter

within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 21, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 21, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Deer Park Business, Inc. dba Fuel Expo; DOCKET NUMBER: 2004-0423-PST-E; TCEQ ID NUMBER: RN102369162; LOCATION: 101 West San Augustine Street, Deer Park, Harris County, Texas; TYPE OF FACILITY: convenience store with an underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and Texas Water Code (TWC), §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate for the UST before accepting delivery of a regulated substance; 30 TAC §334.8(c)(3) and (4), by failing to ensure that the UST registration and self-certification form, which is fully and accurately completed, is submitted to the agency, in a timely manner, to register the UST with the commission; 30 TAC §334.7(a), (c), and (e), by failing to register the new or replacement UST within 30 days after the date a regulated substance is placed into the tank; 30 TAC §334.6(b)(2)(A), by failing to file a written notification form with the TCEQ at least 30 days prior to initiating a major UST construction activity; 30 TAC §334.10(b), by failing to develop and maintain required UST records at the facility; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip tank 2B (containing diesel fuel) with overfill prevention equipment; PENALTY: $7,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Friend Enterprises, Inc. dba Friendly Mart; DOCKET NUMBER: 2003-1045-PST-E; TCEQ ID NUMBER: RN100825090; LOCATION: 7200 Manchaca, Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring; 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation for a UST system at a retail facility; and 30 TAC §334.50(b)(2)(A)(i)(III) and (ii) and TWC, §26.3475(a), by failing to test or monitor the piping in the UST system for releases; PENALTY: $17,000; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200801389
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 11, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of February 26, 2008 through March 6, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BOWIE-SIMS-PRANGE, INC. has applied for a renewal of TPDES Permit No. 12320-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.002 million gallons per day. The facility is located approximately 2200 feet east of the intersection of Hardy Road and Richey Road, north of the City of Houston in Harris County, Texas.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0010436001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 1714 Sandy Dale in Western Homes Subdivision in Harris County, Texas.

DALLAS CHEMICAL TECHNOLOGIES which operates the Houston Lignin Plant, has applied for a renewal of TPDES Permit No. WQ0001968000, which authorizes the discharge of storm water associated with industrial activity, pad washdown water, and boiler blowdown at a on an intermittent and flow variable basis via Outfall 002. The facility is located at 10120 Hirsch Road, southeast of the Parker Street and Hirsch Road intersection, in the City of Houston, Harris County, Texas.

DUCO, INC. has applied for a renewal of TPDES Permit No. 12874-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 16661 Jacintoport Boulevard in Harris County, Texas.

ELITE COMPUTER CONSULTANTS, L.P. owner has applied for a renewal of TPDES Permit No. WQ0012600001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The wastewater treatment facility is located at 15110 Grant Road on the south bank of Faulkey Gully, approximately 600 feet west of Shaw Road and approximately 800 feet northeast of Grant Road in Harris County Texas.

J & S WATER COMPANY, L.L.C. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13882-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 813 Hollyvale, east of Interstate Highway 45 in northern Houston in Harris County, Texas.

THE CITY OF LAMPASAS has applied for a renewal of TPDES Permit No. WQ0010205002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000

gallons per day. The facility is located on the south side of Sulphur Creek, at the east end of Creek Street, approximately 6,000 feet northeast of the intersection of U.S. Highway 183 and U.S. Highway 190 in the City of Lampasas in Lampasas County, Texas.

LMV MANAGEMENT CO., LTD. has applied for a renewal of TPDES Permit No. WQ0014586001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located approximately 8,200 feet south of the intersection of Riley Fuzzel Road and Woodsons Gully in Montgomery County, Texas.

CITY OF LUBBOCK, TEXAS DEPARTMENT OF TRANSPORTATION - LUBBOCK DISTRICT, AND TEXAS TECH UNIVERSITY SYSTEM which operate the City of Lubbock Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS001501, which authorizes storm water point source discharges to surface water in the state from the City of Lubbock MS4. This permit will be renewed as TPDES Permit No. WQ0004773000. The MS4 is located within the corporate boundary of the City of Lubbock, in Lubbock County, Texas.

THE CITY OF MERTZON has applied for a renewal of Permit No. 04535 to authorize the land application of wastewater treatment plant sewage sludge for beneficial use on 3.5 acres. The land application site is located 2.4 miles northwest of Mertzon on the south side of Farm-to-Market Road 2469, 2.5 miles northwest of the intersection in Mertzon of Farm-to-Market Road 2469 and U.S. Highway 67 in Irion County, Texas.

SOUTH CENTRAL WATER COMPANY has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014852001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 7,200 feet northeast of Farm-to-Market Road 1486 and Shady Oaks Lane in Montgomery County, Texas.

TIN INC. which operates Buna Lumber Operation, has applied for a renewal of TPDES Permit No. WQ0002924000, which authorizes the discharge of commingled wastewaters on an intermittent and flow variable basis via Outfall 001, and storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located approximately one mile east of U.S. Highway 96 and approximately two miles north of the community of Buna, Jasper County, Texas

CITY OF TOMBALL has applied for a renewal of TPDES Permit No. WQ0010616002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located south of Holderrieth Road approximately 2,100 feet north of Willow Creek and approximately 4,300 feet east of the intersection of State Highway 249 and Holderrieth Road in Harris County, Texas.

VANCECO, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014248001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the north side of State Highway 105, approximately 3,200 feet west of the point where State Highway 105 crosses the San Jacinto River in Montgomery County, Texas.

WATERFORD CLUB DEVELOPMENT LP has applied for a new permit, Proposed Permit No. WQ14766001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day via subsurface drip irrigation of 55.1 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 5,100 feet southeast of the intersection of Farm-to-Market Road 1431 and County Road 344 in Burnet County, Texas.

WOODGATE MOBILE HOME VILLAGE, INC. has applied for a renewal of TPDES Permit No. 12414-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located approximately 0.25 mile west of the intersection of Veterans Memorial Drive and Frick Road on the south side of Frick Road in Harris County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE THIS NOTICE IS MAILED.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to SET ENVIRONMENTAL, INC. which operates an industrial solid waste management facility, to correct typographical errors in the monitoring frequencies at Outfall 001 for the Chemical Oxygen Demand and Oil and Grease parameters in the permit. The existing permit authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfall 001. The facility is located at 5743 Cheswood Street, in the City of Houston, Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801412
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 26, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Double Diamond Utilities Co. dba White Bluff Community Water System; SOAH Docket No. 582-07-3289; TCEQ Docket No. 2006-1730-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Double Diamond Utilities Co. dba White Bluff Community Water System on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801414
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 4, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Chester Hermes; SOAH Docket No. 582-08-0163; TCEQ Docket No. 2007-0452-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Chester Hermes on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801415
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 25, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Palo Gaucho, Inc.; SOAH Docket No. 582-07-4078; TCEQ Docket No. 2006-2025-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Palo Gaucho, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801416
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2008

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 8-Day Pre-Election Report due October 29, 2007

Roland M. Chavez, Houston Professional Fire Fighters Association Local #341 PAC, 1907 Freeman St., Houston, Texas 77009-8334

Deadline: Semiannual Report due January 15, 2008, for Candidates and Officeholders

Harold V. Dutton Jr., 4001 Jewett St., Houston, Texas 77026

Michael A. Franks, 20230 Kings Camp Dr., Katy, Texas 77450-4322

Randy Frazier, 2450 Louisiana St., Ste. 400-514, Houston, Texas 77006-2380

George D. Gilles, 1910 College Ave., Midland, Texas 79701-6935

Anton E. Hackebeil, P.O. Box 220, Hondo, Texas 78861-0220

Jeff Humber, 1721 High Ridge Rd., Benbrook, Texas 76126-2907

Randall Kallinen, 1406 Castle Ct., Houston, Texas 77006-5756

Frank L. Lacy, 401 N. Rio St., Fort Stockton, Texas 79735-4835

Jason Allen Moore, 2716 Bainbridge Dr., Odessa, Texas 79762-5112

George James Sales III, 6306 Brianna Cir., Corpus Christi, Texas 78414-3685

Jim Solis, 1021 S. F St., Harlingen, Texas 78550-6748

Jimmy P. Wrotenbery, 2300 Mimosa Dr., Houston, Texas 77019-6024

Jorge Borunda Zaragoza, 3701 Kirby Dr., Houston, Texas 77098-3900

Deadline: Semiannual Report due January 15, 2008, for Political Action Committees

Jaime Avelar, Americans for Energy Independence, P.O. Box 24, Fabens, Texas 79838-0024

Sandi Breaux, Southwest Republican Club, 4751 Westcreek Dr., Fort Worth, Texas 76133-1371

Roland M. Chavez, Houston Professional Fire Fighters Association Local #341 PAC, 1907 Freeman St., Houston, Texas 77009-8334

Harold Dutton, Harris County Delegation - Caucus, P.O. Box 2910, RM. 3N.05, Austin, Texas 78768

Damon D. Edwards, Ansun PAC, 13701 Broad Oaks Ln., Rosharon, Texas 77583-2031

Richie Floyd, Plano Fire Fighters Committee for Effective Government, 1214 Mars Dr., Cedar Hill, Texas 75104-3206

Dirk Hedges, McKinney Fire Fighter's Association For Responsible Government, P.O. Box 2754, McKinney, Texas 75070-8175

Lisa Holbrook, Texans for John Davis, 1 Greenway Plaza, Ste. 225, Houston, Texas 77046-0106

Eddie Janek, Friends of Kyle Janek, 1 Greenway Plaza, Ste. 225, Houston, Texas 77046-0106

David R. Johannessen, Parents and Teachers Working Together, 1201 W. Park Row Dr., Arlington, Texas 76013-3602

W. Troy McKinney, Concerned Citizens for a Responsible Judiciary PAC, 440 Louisiana St., Ste. 800, Houston, Texas 77002-1637

Marcus M. Mpwo, African Coalition PAC, 17807 Scenic Oaks Dr., Richmond, Texas 77469-8587

Heather Ramon-Ayala, Texans for Local Control, 3822 Blue Oak Pass, San Antonio, Texas 78223-2373

Sherri Riedel, PEIMS PAC, P.O. Box 402, Marion, Texas 78124-0402

Gary Rowe, PAC of the Wichita Falls Association of Insurance Agents, 113 S. Center, P.O. Box 1127, Archer City, Texas 76351-1127

Bobby R. Stephens, Help Elect Responsible Officials PAC, 131 High Gabriel Dr., Leander, Texas 78641-9757

Christopher C. Stevens, The Conservative Cause, P.O. Box 642, League City, Texas 77574-0642

Bruce A. Tankleff, Texas Democratic Women of Montgomery County PAC, 15 Gillium Bluff Pl., The Woodlands, Texas 77382-1622

Lynda P. Vine, Foundation Appraisers Coalition of Texas PAC (FACT), 6106 Vance Jackson Rd. #2, San Antonio, Texas 78230-3373

Deadline: Lobby Activities Report due October 10, 2007

Mark Seale, P.O. Box 301805, Austin, Texas 78703

Deadline: Lobby Activities Report due November 13, 2007

Roland M. Chavez, 1907 Freeman St., Houston, Texas 77009

Mike French, 816 Congress Ave., Ste. 940, Austin, Texas 78701

Mark Seale, P.O. Box 301805, Austin, Texas 78703

Johnny Villarreal, 1907 Freeman St., Houston, Texas 77009

Jim Warren, 710 W. 30th St., Austin, Texas 78705-2206

Deadline: Lobby Activities Report due December 10, 2007

Roland M. Chavez, 1907 Freeman St., Houston, Texas 77009

Johnny Villarreal, 1907 Freeman St., Houston, Texas 77009

Jim Warren, 710 W. 30th St., Austin, Texas 78705-2206

Deadline: Personal Financial Statement due November 1, 2007

James D. Schull, 1328 Trinity Dr., Benbrook, Texas 76126

TRD-200801321
David Reisman
Executive Director
Texas Ethics Commission
Filed: March 5, 2008

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Texas Facilities Commission

Request for Proposals #303-8-11302

The Texas Facilities Commission (TFC), on behalf of the General Land Office (GLO), announces the issuance of Request for Proposals (RFP) #303-8-11302. TFC seeks a minimum of 18 month lease of approximately 12,983 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is March 28, 2008 and the deadline for proposals is April 4, 2008 at 3:00 p.m. The award date is May 1, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=75514*.

TRD-200801376
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 10, 2008

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five year CFSP for the period from October 1, 2004, through September 30, 2009.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2009 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2008 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 29, 2008.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: http://www.dfps.state.tx.us. The web site includes a copy of last year's APSR and a copy of the 2004-2009 CFSP.

Written comments regarding the annual update or the five-year plan may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC W-157; Austin, Texas 78714-9030; telephone (512) 438-3412; fax (512) 438-3782. The comments must be received no later than May 1, 2008.

TRD-200801405
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: March 12, 2008

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the state's application for a renewal of the Texas Waiver for Home and Community-Based Services (HCS waiver). The HSC waiver is a §1915(c) program under the Texas State Plan for Medical Assistance and Title XIX of the Social Security Act. The current waiver will expire August 31, 2008.

The Texas Home and Community-Based Services waiver program provides individualized services and supports to persons with mental retardation who are living with their families, in their own homes, or in other community settings, such as small group homes. Services include: case management; adaptive aids; minor home modifications; counseling and therapies (including audiology, speech therapy, occupational therapy, physical therapy, dietary services, social work, and psychology); dental treatment; nursing; supported home living; foster/companion care; supervised living; residential support; respite; supported employment; and day habilitation. Day habilitation provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. The eligibility requirements are: having

mental retardation or a related condition; meeting eligibility requirements for admission to an intermediate care facility for individuals with mental retardation (ICF-MR); and meeting financial eligibility. When compared to services provided to individuals in an ICF-MR, the renewed waiver is designed to be cost neutral for the entire five-year period.

HHSC is requesting that the waiver renewal be approved for an additional five-year period beginning March 1, 2008. The waiver maintains cost neutrality of service costs for federal fiscal years 2008 through 2013.

To obtain copies of the proposed waiver, interested parties may contact Kyna Belcher, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, telephone (512) 491-1884, fax (512) 491-1953, or e-mail kyna.belcher@hhsc.state.tx.us.

TRD-200801355
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 7, 2008

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 808, Transmittal Number TX 08-004, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective March 22, 2008.

The proposed amendment revises the reimbursement methodology for nursing facility rehabilitative and specialized services to state that Medicaid reimbursement rates to nursing facilities for therapy services provided by independent occupational, physical, and speech therapists are based on the current Medicare relative value units (RVUs) times the current Texas Medicaid conversion factor and then converted to hourly rates, with the same hourly rates applicable to therapy sessions and therapy evaluations. The revised methodology further indicates that the reimbursement rate to nursing facilities for therapy and evaluation services provided by nursing facility staff is a flat fee established by HHSC.

The proposed amendment is estimated to result in additional annual aggregate expenditures of $228,902 for the remainder of federal fiscal year (FFY) 2008 (March 22, 2008, through September 30, 2008), of which approximately $138,623 is federal funds and $90,279 is state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of $554,222, of which approximately $329,430 is federal funds and $224,792 is state general revenue. For FFY 2010, the proposed amendment is estimated to result in additional aggregate annual expenditures of $601,873, of which approximately $357,753 is federal funds and $244,120 is state general revenue.

Interested parties may obtain copies of the proposed amendment by contacting Eileen Kreh, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1347; by facsimile at (512) 491-1998; or by e-mail at Eileen.Kreh@hhsc.state.tx.us. Copies of the proposed amendment will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200801401
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 11, 2008

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Department of State Health Services

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) issued Agreed Orders to the following registrants:

Huntsman Corporation (License Number L04067) of Port Arthur. A total penalty of $15,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Texas Imaging and Diagnostic Center (Registration Number M00796) of Irving. A total penalty of $2,000 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Universal MRI and Diagnostics Center (Registration Number R18519) of Houston. A total penalty of $58,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Stanley A. Lacroix, DDS (Registration Number R07044) of Austin. A total penalty of $500 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Kleinfelder (License Number L01351) of Austin. A total penalty of $9,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Downtown Foot Health Center (Registration Number R17423) of The Woodlands. A total penalty of $2,750 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Lakeside Hospital at Bastrop (Registration Number R29985) of Bastrop. A total penalty of $3,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Doctor's Outpatient Surgicenter (Registration Number R24967) of Pasadena. A total penalty of $8,750 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Diagnostic Health Arlington (Registration Number M00366) of Arlington. A total penalty of $28,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Texas Diagnostic Imaging Center (Registration Number M00657) of Amarillo. A total penalty of $11,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Mesquite Community Hospital (Registration Number M00380) of Mesquite. A total penalty of $1,750 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Shaw Pipeline Services, Inc. (Registration Number OK2319302) of Oklahoma. A total penalty of $2,500 shall be paid by registrant for vi-

olations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Vision Chiropractic, PA (Registration Number R21518) of El Paso. A total penalty of $1,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Coryell Memorial Hospital (Registration Number M00679) of Gatesville. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Spohn Hospital (License Number L02495) of Corpus Christi. A total penalty of $625 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

W.J. Mangold Memorial Hospital (Registration Number R00612) of Lockney. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Martin E. McGonagle, MD, PA (Registration Number R16136) of Brownwood. A total penalty of $500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Grogan's Park Chiropractic Center (Registration Number R22990) of The Woodlands. A total penalty of $1,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

North Texas Imaging/Hampton Center II (Registration Number M00765) of Dallas. A total penalty of $1,000 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

College Station Family Medicine Center (Registration Number R25742) of College Station. A total penalty of $5,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200801404
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 12, 2008

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (West Oaks Senior Apartments) Series 2008

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Holmquist Elementary School, 15040 Westpark, Houston, Texas 77082, at 6:00 p.m. on April 16, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to 2007 Houston Development, LLC, a limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 232-unit multifamily residential rental development for seniors located at approximately 15300 Caseta Drive, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200801353
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 6, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of JEFFERSON LIFE INSURANCE COMPANY to JEFFERSON CASUALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application for admission to the State of Texas by AUTO ONE SELECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Melville, New York.

Application for admission to the State of Texas by UNITED SECURITY ASSURANCE COMPANY OF PENNSYLVANIA, a foreign life, accident and/or health company. The home office is in Souderton, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200801419

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 12, 2008

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of NORTHWEST DIAGNOSTIC CLINIC IPA, LLC to NORTHWEST DIAGNOSTIC CLINIC IPA, LLC, (using the assumed name of ACCESS HEALTH PROVIDERS) a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application to change the name of BANKERS LIFE INSURANCE COMPANY OF NEW YORK to AVIVA LIFE AND ANNUITY COMPANY OF NEW YORK, a foreign third party administrator. The home office is WOODBURY, NEW YORK.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200801420
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 12, 2008

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Legislative Budget Board

Notice of Request for Proposal

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposal (LBB 2008 APR RFP 001) from qualified, independent firms to provide consulting services to assist the LBB in conducting a study of the state's options in providing integrated long-term care housing and support services. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about April 10, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The LBB will also make the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http://www.lbb.state.tx.us after 10:00 a.m. CZT, on March 11, 2008.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on March 17, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than March 20, 2008, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on March 26, 2008. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 3, 2008. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 10, 2008, after 10:00 a.m. CZT;

Questions Due - March 17, 2008, 2:00 p.m. CZT;

Official Responses to Questions Posted - March 20, 2008, or as soon thereafter as practical;

Letters of Intent Due - March 26, 2008, 2:00 p.m. CZT;

Proposals Due - April 3, 2008, 2:00 p.m. CZT;

Contract Execution - April 10, 2008, or as soon thereafter as practical;

Commencement of Project Activities - April 10, 2008, or as soon thereafter as practical.

TRD-200801369
Bill Parr
Assistant Director
Legislative Budget Board
Filed: March 10, 2008

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Texas Lottery Commission

Instant Game Number 1043 "Slots of Ca$h"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1043 is "SLOTS OF CA$H". The play style is "multiple lines".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1043 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1043.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: STAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, BELL SYMBOL, APPLE SYMBOL, CLOVER SYMBOL and RAINBOW SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1043 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	
HORSESHOE SYMBOL	
POT OF GOLD SYMBOL	
BELL SYMBOL	
APPLE SYMBOL	
CLOVER SYMBOL	
RAINBOW SYMBOL	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1043 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1043), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1043-0000001-001.

L. Pack - A pack of "SLOTS OF CA$H" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SLOTS OF CA$H" Instant Game No. 1043 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SLOTS OF CA$H" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) Play Symbols. The player must scratch off the entire play area. If a player reveals 3 matching symbols in a horizontal, vertical or diagonal line within a GAME, the player wins the prize shown for that symbol in the legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 36 (thirty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 36 (thirty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 36 (thirty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than two duplicate non-winning symbols within a GAME.

C. No two non-winning horizontal or vertical lines will have the same play symbols within the same locations within a GAME.

D. No duplicate non-winning GAMES on a ticket.

E. Non-winning play symbols will not match winning play symbols within a GAME.

F. There will be at least one near win per GAME. A near win is a vertical, horizontal or diagonal line where all but one position contains identical play symbols.

G. A GAME can win up to three times but this will only occur on tickets that win 10 or 11 times.

2.3 Procedure for Claiming Prizes.

A. To claim a "SLOTS OF CA$H" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SLOTS OF CA$H" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SLOTS OF CA$H" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SLOTS OF CA$H" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SLOTS OF CA$H" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1043. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1043 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	720,000	8.33
$10	600,000	10.00
$15	160,000	37.50
$20	120,000	50.00
$50	80,000	75.00
$100	10,000	600.00
$500	550	10,909.09
$1,000	150	40,000.00
$5,000	15	400,000.00
$50,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1043 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1043, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801382
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 10, 2008

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Instant Game Number 1060 "Indiana Jones™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1060 is "INDIANA JONES™". The play style for this game is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1060 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1060.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000, and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1060 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1060 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1060), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1060-0000001-001.

L. Pack - A pack of "INDIANA JONES™" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INDIANA JONES™" Instant Game No. 1060 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INDIANA JONES™" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No five or more matching non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as a winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).

G. The $1,000 and $50,000 prize symbols will appear at least once on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim an "INDIANA JONES™" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "INDIANA JONES™" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "INDIANA JONES™" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "INDIANA JONES™" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "INDIANA JONES™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1060. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1060 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	640.000	9.38
$10	460,000	13.04
$15	120,000	50.00
$20	80,000	75.00
$50	96,000	62.50
$100	24,500	244.90
$1,000	75	80,000.00
$5,000	20	300,000.00
$50,000	7	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.22. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1060 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1060, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200801354

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 6, 2008

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 3, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35418 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Niederwald, Texas, and the incorporated city limits of Leander, Texas, with the exception of the Crystal Falls subdivision.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35418.

TRD-200801342
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2008

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 3, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35419 before the Public Utility Commission of Texas.

Time Warner Cable requests to relinquish SICFA No. 90016 and to consolidate its service area footprint into SICFA No. 90008.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35419.

TRD-200801343
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 5, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc., d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35425 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Oak Ridge, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35425.

TRD-200801360
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2008

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 10, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for An Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35442 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the Cities of League City, and Houston, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35442.

TRD-200801398
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2008

♦ ♦ ♦

Notice of Application for Approval of a Revised Nodal Market Implementation Surcharge

On March 6, 2008, the Electric Reliability Council of Texas, Inc. (ERCOT) filed with the Public Utility Commission of Texas (commission) an application for approval of a revised nodal market implementation surcharge and request for interim relief.

Pursuant to the *Order Nunc Pro Tunc* issued in Docket Number 32686, "ERCOT may initiate commission proceedings to change the nodal surcharge only if the change in the Nodal Program cost estimate leading to the request is more than 10% higher or lower than the amounts presented in this proceeding." The current Nodal Surcharge is $0.127 per megawatt-hour (MWh). ERCOT requests that the commission change the Nodal Surcharge to $0.169 per MWh, to be implemented no later than June 1, 2008 so that the anticipated expiration of the surcharge in 2012 would not change. ERCOT bases its request for a revised Nodal Surcharge on the need to recover $311.3 million, which represents the cost of the Nodal Program to be recovered by the Nodal Surcharge, including the costs of financing portions of the Nodal Program with reasonable levels of debt.

Persons who wish to intervene or comment should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments and interventions should reference Docket Number 35428.

ERCOT has posted notice and a copy of its application on its website at http://www.ercot.com/about/governance/legal_notices.html. Interested parties may also access ERCOT's application through the Public Utility Commission's web site at http://www.puc.state.tx.us under Docket Number 35428 - *Application of the Electric Reliability Council of Texas for Approval of a Revised Nodal Market Implementation Surcharge*.

TRD-200801380
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 4, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of ATC Outdoor DAS, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35422 before the Public Utility Commission of Texas.

Applicant intends to provide transport of radio signals for business.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 26, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35422.

TRD-200801359
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 5, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Digit Line Express, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35426 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the areas of Texas currently served by AT&T Texas, and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 26, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35426.

TRD-200801361
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2008

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on March 3, 2008 with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Hill Country Long Distance Telephone Cooperative, Inc., d/b/a Hill Country Long Distance for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f)(3)(B). Docket Number 35421.

The Application: Hill Country Long Distance is a new provider of long distance telephone service in Texas and is registered as an interexchange carrier with the commission. Hill Country Long Distance states that it has elected to use the safe-harbor percentage approved by the commission for its classification of service provided and will be submitting its compliance tariff to reflect the safe-harbor methodology. Hill Country Long Distance requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Hill Country Long Distance to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 21, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35421.

TRD-200801344
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2008

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on March 11, 2008, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on March 14, 2008.

Docket Title and Number: Application of Windstream Sugar Land, Inc. for Approval of a LRIC Study for Directory Assistance Call Completion Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 35448.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 35448. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 35448.

TRD-200801411
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 12, 2008

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Texas Residential Construction Commission

Notice of Application for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission or TRCC) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective September 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for 21 days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average. Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

M. Christopher Custom Homes LLC, 630 Oakmont Court, Fairview, Texas 75069. M. Christopher Custom Homes LLC holds TRCC builder registration #32352. The applicant's registered agent is Rudy Rivas.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for 21 days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200801326
A. Duane Waddill
Executive Director
Texas Residential Construction Commission
Filed: March 5, 2008

♦ ♦ ♦

Supreme Court of Texas

Order Amending Texas Rules of Appellate Procedure

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 08-9017

ORDERED that:

1. Pursuant to Texas Government Code §22.004, the Texas Rules of Appellate Procedure are amended as follows.

2. This Order approves changes to rules of appellate procedure in civil cases. The Court of Criminal Appeals is concurrently issuing a separate order approving amendments to rules of appellate procedure in criminal cases. Amendments to rules of appellate procedure that apply to both civil and criminal cases are thus jointly approved by both courts. For convenience, all of the appellate rule amendments are attached to both orders.

3. The comments appended to these rules are intended to inform the construction and application of the rules.

4. Comments on changes to rules in civil cases may be submitted to the Court in writing on or before June 30, 2008 addressed to Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.

5. These amended rules, with any changes made after public comments are received, take effect September 1, 2008.

6. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature before December 1; and

d. submit a copy of this Order for publication in the *Texas Register.*

SIGNED AND ENTERED, this 10th day of March, 2008.

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

Harriet O'Neill, Justice

_____

J. Dale Wainwright, Justice

_____

Scott Brister, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

Rule 8. Bankruptcy in Civil Cases

8.1 Notice of Bankruptcy. Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number; and

(d) the date when the bankruptcy petition was filed. ~~; and~~

~~(e) an authenticated copy of the page or pages of the bankruptcy petition that show when the petition was filed.~~

Comment to 2008 change: The amendment eliminates the former requirement that the bankruptcy notice contain certain pages of the bankruptcy petition, in recognition that electronic filing is now prevalent in bankruptcy courts and access to bankruptcy petitions is widely available through the federal PACER system.

Rule 9. Papers Generally

9.3 Number of Copies

(b) *Supreme Court and Court of Criminal Appeals*. Except as otherwise provided in this rule, a ~~A~~ party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals. In the Supreme Court, only an original and two copies of a motion for extension of time or a response to the motion must be filed. ~~, except that~~ In the Court of Criminal Appeals, only the original of the following must be filed ~~in the Court of Criminal Appeals~~:

(1) a motion for extension of time or a response to the motion; or

(2) a pleading under Code of Criminal Procedure article 11.07.

9.8 Protection of Minor Child's Identity in Appellate Proceedings Following Parental-Rights Termination Proceedings or Juvenile Court Proceedings

(a) *Redaction of Minors' Names Generally Required in Appellate Briefing and Opinions.*

(1) In an appeal or original proceeding following a trial at which the termination of parental rights was at issue, a minor child shall be identified only by one or more initial letters of the minor's name or by a fictitious name in any papers-except a docketing statement-submitted to an appellate court, or in any opinion issued by an appellate court, unless the court orders otherwise.

(2) In an appeal or original proceeding following trial proceedings under Title 3 of the Family Code, a minor child shall be identified only by one or more initial letters of the minor's name or by a fictitious name in any papers-except a docketing statement-submitted to an appellate court, or in any opinion issued by an appellate court.

(b) *Redaction of Parents' Names.*

(1) In an appeal or original proceeding described in paragraph (a)(1), an appellate court may substitute in an opinion, and may order parties and amici curiae to substitute in any papers submitted to the appellate court, one or more initial letters or a fictitious name for the name of a minor child's parent or other family member if the court determines that such substitution is necessary to protect the minor child's identity.

(2) In an appeal or original proceeding described in paragraph (a)(2), an appellate court must substitute in an opinion, and parties and amici curiae must substitute in any papers submitted to the appellate court, one or more initial letters or a fictitious name for the name of a minor child's parent or other family member.

(c) *Redaction of Children's Names In Copies of Appendix Items.* In an appeal or original proceeding described in paragraph (a)(1) or (a)(2), for any necessary or optional appendix items to be included with a brief, petition, or motion, copies of any appendix items containing the name of a minor child shall be redacted so that the minor is identified only by one or more initial letters of the minor's name or by a fictitious name.

(d) *Redaction of Parents' Names In Copies of Appendix Items.*

(1) In an appeal or original proceeding described in paragraph (a)(1), an appellate court may order the substitution of initials or a fictitious name for the name of a minor child's parents or other family members in any necessary or optional appendix items to be included with a brief, petition, or motion if the court determines that such substitution is necessary to protect the minor child's identity.

(2) In an appeal or original proceeding described in paragraph (a)(2), parties and amici curiae must substitute initials or a fictitious name for the name of a minor child's parents or other family members in any necessary or optional appendix items to be included with a brief, petition, or motion.

(e) *No Alteration of Appellate Record.* Nothing in this rule authorizes alteration of the original appellate record except as specifically authorized by court order.

Comment to 2008 change: This is a new rule. Family Code §109.002(d) authorizes appellate courts, in their opinions, to identify parties to suits affecting the parent-child relationship (SAPCR) by fictitious names or by initials only. This law allows courts to protect the privacy interests of minor children involved in SAPCR proceedings, including suits to terminate parental rights. Similarly, Family Code §56.01(j) prohibits identification of a minor child or his family in an appellate opinion related to juvenile court proceedings. However, as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minor children's privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides for the use of initials or fictitious names to protect the identity of a minor child following a parental-rights termination proceeding or juvenile court proceeding. Any fictitious name used for a parent or child should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases.

Rule 10. Motions in the Appellate Court

10.1 Contents of Motions; Response

(a) *Motion.* Unless these rules prescribe another form, a party must apply by motion for an order or other relief. The motion must:

(5) in civil cases, except for motions for rehearing and motions for en banc reconsideration of panel decisions, contain or be accompanied by a certificate stating that the filing party conferred or made a reasonable attempt to confer with other parties about the merits of the motion and whether those parties oppose the motion.

10.2 Evidence on Motions. A motion need not be verified unless it depends on the following types of facts, in which case the motion must be supported by affidavit or other satisfactory evidence. The types of facts requiring proof are those that are:

(a) not in the record;

(b) not within the court's knowledge in its official capacity; ~~or~~ and

(c) not within the personal knowledge of the attorney signing the motion.

Comment to 2008 change: It is presumed that non-movants will oppose the relief sought in motions for rehearing and motions for en banc reconsideration. To encourage consistent application of the certificate-of-conference requirement, Rule 10.1(a)(5) is amended - and Rule 49.11 is added - to exempt those motions from the certificate requirement.

Rule 19. Plenary Power of the Courts of Appeals and Expiration of Term

19.1 Plenary Power of Courts of Appeals. A court of appeals' plenary power over its judgment expires:

(a) 60 days after judgment if no timely filed ~~motion to extend time or~~ motion for rehearing, timely filed motion for en banc reconsideration, or timely filed motion to extend time to file a motion for rehearing or for en banc reconsideration is then pending.

(b) 30 days after the court overrules all timely filed motions for rehearing, ~~including~~ all timely filed motions for en banc reconsideration of a panel's decision under Rule 49.~~7~~6, and all timely motions to extend time to file a motion for rehearing or a motion for en banc reconsideration.

Comment to 2008 change: The provisions of Rule 19 governing the courts of appeals' plenary power are revised in conjunction with the amendments to Rules 49 and 53.7 concerning motions for en banc reconsideration.

Rule 20. When Party Is Indigent

20.1 Civil Cases

(a) *Establishing indigence.* A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(1) the party files an affidavit of indigence in compliance with this rule;

(2) the claim of indigence is not contested, is not contestable, or if contested, the contest is not sustained by written order; and

(3) the party timely files a notice of appeal.

(b) *Contents of affidavit.* The affidavit of indigence must identify the party filing the affidavit and must state what amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

(12) if applicable, the party's lack of the skill and access to equipment necessary to prepare the appendix, as required by Rule 38.5(d).

(c) *TAJF Certificate.* If the appellant proceeded in the trial court without payment of fees pursuant to an Interest on Lawyers Trust Accounts (IOLTA) or other Texas Access to Justice Foundation (TAJF) certificate, an additional TAJF certificate may be filed in the appellate court confirming that the TAJF-funded program rescreened the party for income eligibility under TAJF income guidelines after entry of the trial court's judgment. A party's affidavit of inability accompanied by an attorney's TAJF certificate may not be contested.

~~(c)~~(d) *When and Where Affidavit Filed.*

(1) *Appeals.* An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Rule 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence. An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(3) *Extension of time.* The appellate court may extend the time to file an affidavit if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b). But the appellate court may not dismiss the appeal or affirm the trial court's judgment on the ground that the appellant has failed to file an affidavit or a sufficient affidavit of indigence unless the court has first provided the appellant notice of the deficiency and a reasonable time to remedy it.

~~(d)~~(e) *Duty of Clerk.*

(1) *Trial court clerk.* If the affidavit of indigence is filed with the trial court clerk under (~~c~~d)(1), the clerk must promptly send a copy of the affidavit to the appropriate court reporter.

(2) *Appellate court clerk.* If the affidavit of indigence is filed with the appellate court clerk ~~under (c)(2)~~ and if the filing party is requesting the preparation of a record, the appellate court clerk must:

(A) send a copy of the affidavit to the trial court clerk and the appropriate court reporter; and

(B) send to the trial court clerk, the court reporter, and all parties, a notice stating the deadline for filing a contest to the affidavit of indigence.

~~(e)~~(f) *Contest to affidavit.* The clerk, the court reporter, the court recorder, or any party may challenge ~~the claim of indigence~~ an affidavit that is not accompanied by a TAJF certificate by filing - in the court in which the affidavit was filed - a contest to the affidavit of indigence. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

~~(f)~~(g) *No contest filed.* [no change to rule text]

~~(g)~~(h) *Burden of proof.* [no change to rule text]

~~(h)~~(i) *Decision in appellate court.* [no change to rule text]

~~(i)~~(j) *Hearing and decision in the trial court.* [no change to rule text]

~~(j)~~(k) *Record to be prepared without payment.* [no change to rule text]

~~(k)~~(l) *Partial payment of costs.* [no change to rule text]

~~(l)~~(m) *Later ability to pay.* [no change to rule text]

~~(m)~~(n) *Costs defined.* [no change to rule text]

Comment to 2008 changes: Rule 20 is revised to clarify that an affidavit of indigence filed during trial is insufficient to establish indigence on appeal; a separate affidavit must be filed with or before the notice of appeal. The amended rule also provides that an appellate court must give an appellant who fails to file a proper appellate indigence affidavit notice of the defect and an opportunity to cure it before dismissing the appeal or affirming the judgment on that basis. *See Higgins v. Randall County Sheriff's Office*, 193 S.W.3d 898 (Tex. 2006). As amended, Rule 20 mirrors Tex. R. Civ. P. 145 by providing that an appellate indigence affidavit accompanied by an IOLTA or other Texas Access to Justice Foundation (TAJF) certificate is not subject to challenge. In Rule 20.1(e)(2) (formerly (d)(2)), the limiting phrase "under (c)(2)" is deleted to clarify that the appellate clerk's duty to forward copies of the affidavit to the trial court clerk and the court reporter, along with a notice setting a deadline to contest the affidavit, applies to affidavits on appeal erroneously filed in the appellate court, not only to affidavits in other appellate proceedings properly filed in the appellate court under 20.1(c)(2).

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.2 Amount of Bond, Deposit or Security

(c)*Determination of Net Worth*

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(~~a~~ A) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. ~~The affidavit is prima facie evidence of the debtor's net worth.~~ A trial court clerk must receive and file a net worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed ~~affidavit of~~ net worth. A net worth affidavit filed with the trial court clerk and in compliance with Rule 24.2(c)(1) is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

24.4 Appellate Review

(a)*Motions; Review.* On a party's motion to the appellate court, that court may review:

(5) the trial court's exercise of discretion under Rule 24.3(a).

(d) *Filing in Appellate Court.* A motion filed under paragraph (a) should be filed in the court of appeals having potential appellate jurisdiction over the underlying judgment. The court of appeals' ruling is subject to review on petition for writ of mandamus to the Texas Supreme Court.

~~(d)~~(e) *Action by Appellate Court.* [no change to rule text]

~~(e)~~(f) *Effect of Ruling.* [no change to rule text]

Comment to 2008 changes: Rule 24.2(c)(3) is amended to provide procedural guidance when the trial court orders additional security to supercede the judgment. New Rule 24.4(d) is added to clarify that an appellate motion seeking relief from a supersedeas order should be filed in the court of appeals that presumably will have jurisdiction when appeal of the underlying case is perfected. The same provision also specifies that a petition for writ of mandamus is the proper procedural vehicle to seek Supreme Court review of a court of appeals' ruling on a supersedeas motion. *See In re Smith / In re Main Place Custom Homes, Inc.*, 192 S.W.3d 564, 568 (Tex. 2006) (per curiam).

Rule 26. Time to Perfect Appeal

26.2. Criminal Cases

(b) *By the State.* The notice of appeal must be filed within ~~15~~ 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

Rule 28. Accelerated Appeals in Civil Cases

28.1 Civil Cases-Appeal As of Right

(a) *Types of Accelerated Appeals.* Appeals from interlocutory orders (when allowed as of right by statute), appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and appeals required by law to be filed or perfected within less than 30 days after the date of the order or judgment being appealed are accelerated appeals.

(b) *Perfection of Accelerated Appeal.* Unless a statute expressly prohibits modification or extension of any statutory appellate deadlines, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3, regardless of any statutory deadlines. Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

(c) *Appeals of Interlocutory Orders.* The trial court need not, but may - within 30 days after the order is signed - file findings of fact and conclusions of law.

(d) *Quo Warranto Appeals.* The trial court may grant a motion for new trial timely filed under Texas Rule of Civil Procedure Rule 329b (a) - (b) until 50 days after the trial court's final judgment is signed. If not determined by signed written order within that period, the motion will be deemed overruled by operation of law on expiration of that period.

(e) *Record and Briefs.* In lieu of the clerk's record, the appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers. The appellate court may allow the case to be submitted without briefs. The deadlines and procedures for filing the record and briefs in an accelerated appeal are provided in Rules 35.1 and 38.6.

28.2 Agreed Interlocutory Appeals in Civil Cases

(a) *Perfecting appeal.* To perfect an appeal of an interlocutory order under Civil Practice and Remedies Code §51.014(d), a party to the trial court proceeding must:

(1) file a notice of accelerated appeal with the trial court clerk not later than the 20th day after the date the trial court signs a written order granting permission to appeal, unless the court of appeals extends the time for filing pursuant to Rule 26.3;

(2) file with the clerk of the appellate court a copy of the notice of accelerated appeal, as specified in Rule 25.1, and a docketing statement, as specified in Rule 32.1;

(3) pay to the clerk of the appellate court all required fees authorized to be collected by the clerk; and

(4) serve a copy of the notice of accelerated appeal on all parties to the trial court proceeding.

(b) *Contents of Notice.* The notice of accelerated appeal must contain, in addition to the items required by Rule 25.1(d), the following:

(1) a list of the names of all parties to the trial court proceeding and the names, addresses and telefax numbers of all trial and appellate counsel;

(2) a copy of the trial court's order granting permission to appeal;

(3) a copy of the trial court order appealed from;

(4) a statement that all parties to the trial court proceeding agreed to the trial court's order granting permission to appeal;

(5) a statement that all parties to the trial court proceeding agreed that the order granting permission to appeal involves a controlling question of law as to which there is a substantial ground for difference of opinion;

(6) a brief statement of the issues or points presented; and

(7) a concise explanation of how an immediate appeal may materially advance the ultimate termination of the litigation.

(c) *Jurisdiction.* If the court of appeals determines that a notice of appeal filed under this section does not demonstrate the court's jurisdiction, it may order the appellant to file an amended notice of appeal. The court of appeals may also, on a party's motion or its own motion, order the appellant or any other party to file briefing addressing whether the appeal satisfies the criteria specified in Civil Practice and Remedies Code §51.014(d), and may require the parties to file supporting evidence. If, after providing an opportunity to file an amended notice of appeal or briefing addressing potential jurisdictional defects, the court of appeals concludes that jurisdictional defects exist, it may dismiss the appeal for want of jurisdiction at any stage of the appeal.

(d) *Record; briefs.* The rules governing the filing of the appellate record and briefs in accelerated appeals apply. A party may address in its brief any issues related to the court of appeals' jurisdiction, including whether the appeal satisfies the criteria specified in Civil Practice and Remedies Code §51.014(d).

(e) *No automatic stay of proceedings in trial court.* An appeal under Civil Practice and Remedies Code §51.014(d) does not stay proceedings in the trial court unless the parties agree to - and the trial court, the court of appeals, or a justice of the court of appeals orders - a stay of the proceedings.

Comment to 2008 changes: The provisions of prior Rule 28 are amended and reorganized as new Rule 28.1 to more clearly define accelerated appeals and provide a uniform appellate timetable. Many statutes provide for accelerated or expedited appellate timetables, including, among others, appeals of final judgments in a suit in which termination of the parent-child relationship is in issue as provided in Family Code §109.002. Unless a statute expressly prohibits rulemaking that would alter a statutory appellate deadline, Rule 28 is made expressly applicable to all such appeals.

New Rule 28.2 is added to provide procedures governing an appeal of an interlocutory order under Civil Practice and Remedies Code §51.014(d). The Legislature deleted former subsection (f) of §51.014 in 2005, eliminating the provision that gave the court of appeals discretion as to whether to permit an agreed appeal. New Rule 28.2 reflects the statutory procedure as modified by the 2005 amendment.

Rule 29. Orders Pending Interlocutory Appeal in Civil Cases

29.5. Further Proceedings in Trial Court. While appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and unless prohibited by statute may make further orders, including one dissolving the order complained of on appeal. ~~appealed from, and i~~If permitted by law, the trial court may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.

Comment to 2008 changes: Rule 29.5 is amended to correspond with Civil Practice and Remedies Code §51.014(b), as amended in 2003, staying all proceedings in the trial court pending resolution of interlocutory appeals of class certification orders, denials of summary judgments based on assertions of immunity by governmental officers or employees, and orders granting or denying a governmental unit's plea to the jurisdiction.

Rule 38. Requisites of Briefs

38.1 Appellant's Brief. The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) *Identity of parties and counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8.

(e) *Statement Regarding Oral Argument.* The brief may include a statement explaining why oral argument should, or should not, be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of its brief.

~~(e)~~(f) *Issues Presented.* [no change to rule text]

~~(f)~~(g) *Statement of Facts.* [no change to rule text]

~~(g~~(h) *Summary of the Argument.* [no change to rule text]

~~(h)~~(i) *Argument.* [no change to rule text]

~~(i)~~(j) *Prayer.* [no change to rule text]

~~(j)~~(k) *Appendix in Civil Cases.* [no change to rule text]

38.4 Length of Briefs. An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix.

Comment to 2008 changes: Rule 38 is amended to provide for an optional statement regarding oral argument in an appellant's or appellee's brief. The optional statement is limited to one page, which does not count toward the briefing page limit.

Rule 39. Oral Argument; Decision Without Argument

39.1 Right to Oral Argument. ~~Except as provided in 39.8, a~~ Any party who has filed a brief and who has timely requested oral argument may argue the case ~~to the court when the case is called for argument.~~ before a panel of three justices unless the court, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

~~39.8 Cases Advanced Without Oral Argument.~~ ~~In its discretion, the court of appeals may decide a case without oral argument if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal.~~

39.9~~8~~ Clerk's Notice. [no change to rule text]

Comment to 2008 changes: Rule 39 is amended to modify the procedures for determining whether oral argument will be heard in a particular case. The amended rule provides for oral argument unless the court determines it to be unnecessary. The rule lists four reasons for denying oral argument, modeled on Federal Rule of Appellate Procedure 34(a)(2); however, the members of the court need not agree on, and generally should not announce, a specific reason or reasons for declining oral argument.

Rule 41. Panel and En Banc Decision

41.1 Decision by Panel

(b) *When Panel Cannot Agree on Judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must designate another justice of the court to sit on the panel to consider the case, request the temporary assignment by the Chief Justice of the Supreme Court of a court of appeals justice from another court of appeals, a retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit on the panel to consider the case, or convene the court en banc to consider the case. The reconstituted panel or the en banc court may order the case reargued.

(c) *When Court Cannot Agree on Judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.2 Decision by En Banc Court

(b)*When En Banc Court Cannot Agree on Judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge who is qualified for appointment by law, or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.3 Precedent in Transferred Cases. In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court. The court's opinion may state whether the outcome would have been different had the transferee court not been required to decide the case in accordance with the transferor court's precedent.

Comment to 2008 changes: Rules 41.1 and 41.2 are amended to reflect the 2003 legislative amendment adding subsection (h) to Government Code §74.003, which authorizes the Chief Justice of the Supreme Court to temporarily assign an active district court judge to hear a matter pending in an appellate court. The statutory provisions governing the assignment of judges to appellate courts are located in chapters 74 and 75 of the Government Code. Other minor changes are made for consistency.

New Rule 41.3 is added to require, in appellate cases transferred by the Supreme Court under Government Code §73.001 for docket equalization or other purposes, that the transferee court must generally resolve any conflict between the precedent of the transferor court and the precedent of the transferee court (or that of any other intermediate appellate court the transferee court otherwise would have followed) by following the precedent of the transferor court, unless it appears that the transferor court itself would not be bound by that precedent. The rule requires the transferee court to "stand in the shoes" of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred. However, the transferee court is not expected to follow the local rules of the transferor court or otherwise supplant its own local procedures with those of the transferor court.

Rule 47. Opinions, Publication, and Citation

47.2 Designation and Signing of Opinions; Participating Justices.

(a) *Civil and Criminal Cases.* A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court.

(b) *Criminal Cases.* In addition, each opinion and memorandum opinion in a criminal case must bear the notation "publish" or "do not publish" as determined - before the opinion is handed down-by a majority of the justices who participate in considering the case. Any party may move the appellate court to change the notation, but the court of appeals must not change the notation after the Court of Criminal Appeals has acted on any party's petition for discretionary review or other requests for relief. The Court of Criminal Appeals may, at any time, order that a "do not publish" notation be changed to "publish."

(c) *Civil Cases.* Opinions and memorandum opinions in civil cases issued on or after January 1, 2003 shall not be designated "do not publish."

47.7 Citation of Unpublished Opinions.

(a) *Criminal Cases.* Opinions and memorandum opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited with the notation, "(not designated for publication)."

(b) *Civil Cases.* Opinions and memorandum opinions designated "do not publish" under these rules by the court of appeals prior to January 1, 2003 have no precedential value but may be cited with the notation, "(not designated for publication)." If an opinion or memorandum opinion issued on or after that date is erroneously designated "do not publish," the erroneous designation will not affect the precedential value of the decision.

Comment to 2008 changes: Effective January 1, 2003, Rule 47 was amended to discontinue in civil cases, on a prospective basis, the practice of allowing courts of appeals to designate opinions as either "published" or "unpublished." Rule 47.7 was amended to eliminate the prior prohibition against citing unpublished opinions and to clarify that, in civil cases, only unpublished opinions issued prior to the 2003 amendment would lack precedential value, because following the 2003 amendment such cases were not to be designated either as published or unpublished. But the phrase "opinions not designated for publication," which was intended to apply only to opinions affirmatively designated "do not publish," could be misread as suggesting that all opinions in civil cases published after 2002 - none of which should be affirmatively designated for publication - lack precedential value. The 2008 amendments clarify that, with respect to civil cases, only opinions issued prior to the 2003 amendment and affirmatively designated "do not publish" should be considered "unpublished" cases lacking precedential value. The provisions governing citation of unpublished opinions in criminal cases are substantively unchanged; Rules 47.2 and 47.7 are amended to clarify that memorandum opinions are subject to those rules.

Rule 49. Motion ~~and Further Motion~~ for Rehearing and En Banc Reconsideration

49.1 Motion for Rehearing. A motion for rehearing may be filed within 15 days after the court of appeals' judgment or order is rendered. The motion must clearly state the points relied on for the rehearing. Af-

ter a motion for rehearing is decided, another motion for rehearing may be filed within 15 days of the court's action only if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues an opinion in overruling a motion for rehearing.

49.5 Further Motion for Rehearing. After a motion for rehearing is decided, a further motion for rehearing may be filed within 15 days of the court's action if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues an opinion in overruling a motion for rehearing.

49.65 Amendments. A motion for rehearing or a motion for en banc reconsideration may be amended as a matter of right anytime before the 15-day period allowed for filing the motion expires, and with leave of the court, anytime before the court of appeals decides the motion.

49.76 En Banc Reconsideration. A party may file a motion for en banc reconsideration, as a separate motion, with or without filing a motion for rehearing, within 15 days after the court of appeals' judgment or order is rendered. Alternatively, a motion for en banc reconsideration may be filed by a party no later than 15 days after the overruling of the same party's last timely filed motion for rehearing. While the court has plenary power, as provided in Rule 19, a majority of the en banc court may, with or without a motion, order en banc reconsideration of a panel's decision. If a majority orders reconsideration, the panel's judgment or order does not become final, and the case will be resubmitted to the court for en banc review and disposition.

49.87 Extension of Time. A court of appeals may extend the time for filing a motion for rehearing or a further motion for rehearing motion for en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

49.98 Not Required for Review. A motion for rehearing is not required to preserve error and is not a prerequisite to filing:

(a) a motion for en banc reconsideration as provided by Rule 49.6;

(b) a petition for review in the Supreme Court; or

(c) a petition for discretionary review in to the Court of Criminal Appeals nor is it required to preserve error.

49.109 Length of Motion and Response. A motion or response must be no longer than 15 pages.

49.10 Relationship to Petition for Review. A party may not file a motion for rehearing in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or the court of appeals from ruling on the motion. If a motion for rehearing is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

49.11 Certificate of Conference Not Required. A certificate of conference is not required for a motion for rehearing or for a motion for en banc reconsideration of a panel's decision.

Comment to 2008 changes: Rule 49 is revised in several respects. Former Rule 49.5 is relocated to Rule 49.1, which omits the former rule's "further" motion language but retains its provisions limiting the circumstances in which another rehearing motion can be filed. Former Rule 49.7, now Rule 49.6, is amended to include procedures governing the filing a motion for en banc reconsideration. New Rule 49.10 consists of those provisions of former Rule 53.7(b) that address motions for rehearing; the provisions of Rule 53.7(b) that address petitions for review are retained. New Rule 49.11 mirrors Rule 10.1(a)(5)'s new provision exempting motions for rehearing and motions for en banc reconsideration from the certificate-of-conference requirement.

Rule 50. Reconsideration on Petition for Discretionary Review

Within 60 30 days after a petition for discretionary review is has been filed with the clerk of the court of appeals that delivered the decision, a majority of the justices who participated in the decision may, as provided by subsection (a), summarily reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, that the original opinion or judgment is must be withdrawn and the modified or corrected opinion or judgment is must be substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

Rule 52. Original Proceedings

52.3 Form and Contents of Petition. All factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated. The petition must, under appropriate headings and in the order here indicated, contain the following:

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(5) if the petition is filed in the Supreme Court after a petition requesting the same relief was filed in the court of appeals:

(D) the citation of the court's opinion , if available, or a statement that the opinion was unpublished;

(g) *Statement of Facts.* The petition must state concisely and without argument the facts pertinent to the issues or points presented. Every statement of fact in the petition must be supported by citation to competent evidence included in The statement must be supported by references to the appendix or record.

(j) *Certification.* The person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

(j)(k) *Appendix.* [no change to rule text]

52.6 Length of Petition, Response, and Reply. Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if

filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Comment to 2008 changes: Rule 47 was amended effective January 1, 2003 to eliminate in civil cases, on a prospective basis, the former distinction between "published" and "unpublished" decisions. Rule 52.3(d)(5)(D) is now amended to recognize that an opinion in a civil appeal decided after 2002 should not be described as "unpublished" in the statement of the case even if the opinion was not published in the South Western Reporter, because Rule 47 no longer authorizes the courts of appeals to designate an opinion in a civil appeal either as "published" or "unpublished." If no South Western Reporter citation is available, a LEXIS or Westlaw citation may be provided.

Rule 52.3 is further amended to delete the requirement of verifying all factual statements by affidavit. Instead, the filer must certify that all factual statements are supported by citation to competent evidence in the appendix or record.

Rule 53. Petition for Review

53.2 Contents of Petition

(d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(8) the citation for the court of appeals' opinion~~, if available, or a statement that the opinion was unpublished~~; and

(9) the disposition of the case by the court of appeals, including the court's disposition of any motions for rehearing or motions for en banc reconsideration. If any motions for rehearing or motions for en banc reconsideration are pending in the court of appeals at the time the petition for review is filed, that information also must be included in the statement of the case.

53.7 Time and Place of Filing

(a) *Petition.* Unless the Supreme Court for good cause orders an earlier filing deadline, ~~T~~the petition must be filed with the Supreme Court within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or motion for en banc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing and all timely filed motions for en banc reconsideration.

(b) *Premature filing.* ~~A party may not file a motion for rehearing in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or the court of appeals from ruling on the motion. If a motion for rehearing is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.~~ A petition filed before the last ruling on all timely filed motions for rehearing and motions for en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or motion for en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review, as required by Rule 53.2(d)(9).

Comment to 2008 change: Rule 53.7(a) is amended to clarify that (1) the Supreme Court may shorten the time for filing a petition for review, and (2) the timely filing of a motion for en banc reconsideration tolls the commencement of the 45-day period for filing a petition for review until the motion is overruled. Rule 53.2(d)(9) is amended to require a party that prematurely files a petition for review to notify the Supreme Court of any panel rehearing or en banc reconsideration motions still pending in the court of appeals. Rule 53.7(b) is revised to reference this new requirement and to relocate to new Rule 49.10 those provisions governing motions for rehearing. Rule 53.2(d)(8) is amended to delete the outdated reference to unpublished opinions in civil cases, similar to the change made to Rule 52.3(d)(5)(D).

Rule 68. Discretionary Review With Petition

68.7. Court of Appeals Clerk's Duties

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c)~~(b)~~ *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within 60 ~~30~~ days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

~~**68.9 Reply**~~

~~The opposing party has 30 days after the timely filing of the petition in the Court of Criminal Appeals--unless additional time is allowed--to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing a reply has expired, the petition will be treated as submitted to the Court and ready for disposition.~~

Rule 70. Brief on the Merits

70.3 Brief Contents and Form. Briefs must comply with the requirements of Rule 38, except that they need not contain the appendix (Rule 38.1(j k)). Copies must be served as required by Rule 68.11.

71.3 Briefs. Briefs in a direct appeal should be prepared and filed in accordance with Rule 38, except that the brief need not contain an appendix (Rule 38.1(j k)), and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-200801383
Jody Hughes
Rules Attorney
Supreme Court of Texas
Filed: March 11, 2008

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Order Promulgating Rule of Judicial Administration 15

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 08-9004

It is hereby ORDERED that:

1. Pursuant to the Texas Constitution, article V, section 31(a), and Texas Government Code §74.024, the Texas Rules of Judicial Administration are amended by adding Rule 15, which addresses appeals from

trial courts located in counties assigned to multiple appellate districts, as follows.

2. Comments on these revisions may be submitted to the Court in writing on or before June 30, 2008. Comments should be directed to Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.

3. This rule, with any changes made after public comments are received, takes effect September 1, 2008.

4. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature before December 1; and

d. submit a copy of this Order for publication in the *Texas Register.*

SIGNED AND ENTERED, this 10th day of March, 2008.

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

Harriet O'Neill, Justice

_____

J. Dale Wainwright, Justice

_____

Scott Brister, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

Rule 15. Appeals from Trial Courts in Counties Assigned to Multiple Appellate Districts.

15.1 Applicability. This rule applies to appeals to a court of appeals from an order or judgment issued by a trial court in a county assigned by law to more than one court of appeals district, except where assignment of such appeals is governed by statute. This rule does not apply to appeals to the First or Fourteenth Court of Appeals from trial courts in counties in the districts of the First or Fourteenth Court of Appeals, as assignment of such appeals is governed by Tex. Gov't Code §22.202(h).

15.2 When Consolidation Required. If notices of appeal filed by two or more parties from a single judgment or order designate two courts of appeals that both have jurisdiction of the appeal because the county in which the trial court sits is assigned to more than one appellate district, the appeals must be consolidated in one of the courts of appeals.

15.3 Consolidation by Agreement; Notice to Courts of Appeals.

(a) *Appealing parties to confer regarding consolidation.* When any appealing party learns that two or more parties have properly designated two different courts of appeals, that party must promptly confer with lead counsel for all other appealing parties (if represented, otherwise counsel must confer with the pro se party) and determine if all appealing parties will agree to consolidate the appeals in one of the courts of appeals.

(b) *Time to provide notice.* No later than 30 days - 20 days in an accelerated appeal - after the filing date of the first-filed notice of appeal described in paragraph (a), the parties must submit to the clerks of both courts of appeals written notice either of the appealing parties' agreement to consolidate the appeals or of the appealing parties' inability to reach agreement regarding consolidation.

(c) *Contents of notice.* The notice must identify each appealing party and the party's counsel (if represented, or state that the party is pro se), and must either identify the court of appeals designated by agreement or state that the appealing parties were unable to agree to consolidate all appeals in a particular court. The notice must also contain a certificate stating that the filing parties conferred, or made a reasonable attempt to confer, with all other appealing parties regarding consolidation of the appeals. If the notice states that all appealing parties have agreed to consolidation, it must identify every party or party's attorney who agreed to the consolidation.

(d) *Consolidation by agreement of all appealing parties.* If the clerks of both courts of appeals receive notice that all appealing parties have agreed to consolidation, the Chief Justices of both courts shall request the Chief Justice of the Supreme Court to transfer all pending appeals in the case to the court of appeals designated by the parties' agreement.

15.4 Consolidation When Appealing Parties Unable to Agree.

(a) *Clerks of courts of appeals to jointly notify trial court clerk.*

(i) If both courts of appeals receive notice of the appealing parties' inability to reach agreement regarding consolidation, the clerks of both appellate courts must jointly notify the clerk of the trial court in writing of that fact.

(ii) If the period described in Rule 15.3(b) has passed and the clerks of the two courts of appeals have not received any notice from the appealing parties regarding consolidation, the Chief Justices of the two courts of appeals shall confer and instruct the clerks of their respective courts to jointly notify the clerk of the trial court in writing that the appealing parties failed to timely submit notice of agreement regarding consolidation, and instruct the clerk to perform the selection process in Rule 15.4(b).

(b) *Consolidation by trial court clerk.* After the trial court clerk receives notice from the clerks of the courts of appeals regarding either the appealing parties' inability to reach agreement as to consolidation or their failure to timely submit notice of agreement, the clerk shall write the numbers of the two courts of appeals on identical slips of paper and place the slips in a container folded in half or otherwise arranged so that the numbers are completely hidden from view. The trial court clerk shall draw a number from the container at random, in a public place, and shall assign the case to the court of appeals for the corresponding number drawn.

15.5 All Appeals From Same Judgment or Order to be Consolidated Together. When appeals to multiple courts of appeals have been consolidated pursuant to this rule, other parties' appeals from the same judgment or order underlying the consolidated appeals must be assigned to the same court of appeals in which the previous appeals were consolidated.

TRD-200801393
Jody Hughes
Rules Attorney
Supreme Court of Texas
Filed: March 11, 2008

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The Texas A&M University System

Request for Qualifications

RFQ01 OTC-8-005 Assessment Consultant

The Texas A&M University System is accepting proposals and intends to enter into an Agreement with a consultant to Perform the duties of assessment of the potential new product-market development opportunities specifically with carbon nanotubes requiring the developed dispersion (exfoliation) technology. The awarded vendor shall complete all authorized work in accordance with the time for performance described for the work and consistent with the highest customs, standards and practices of his/her business or profession.

The RFQ documentation may be obtained by contacting: Don Barwick, HUB & Procurement Manager, System Office of HUB & Procurement Programs, The Texas A&M University System, 200 Technology Way, Suite 1267, College Station, Texas 77845 or e-mail at dbarwick@tamu.edu.

The A&M System finds it of utmost importance to provide an initial assessment of the potential new product-market development opportunities with carbon nanotubes. As an agency of the State of Texas, it is vital for the A&M System to successfully commercialize a carbon nanotube dispersion (exfoliation) technology ("Technology") recently developed at Texas A&M by Dr. H.J. Sue. To be able to do this, the A&M System and its key representatives must address the public in a variety of settings and must be able to consider the issues that those outside of the A&M System find important. An assessment consultant with expertise in dealing with state and federal governmental agencies and the private sector, and who is able to take a more detached global view of issues will provide such a needed service.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on April 10, 2008.

TRD-200801391
Don Barwick
HUB & Procurement Manager
The Texas A&M University System
Filed: March 11, 2008

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Texas Water Development Board

Request for Statements of Interest for Federal Funding under the Texas Environmental Infrastructure Program

The Texas Water Development Board (board) is requesting Statements of Interest (SOIs) from interested political subdivisions. These SOIs will be used to provide the U.S. Congress with a list of projects for funding consideration under the Texas Environmental Infrastructure Program, authorized through the U.S. Army Corps of Engineers (USACE) under Public Law 110-114, the Water Resources Development Act of 2007 (WRDA).

The Texas Environmental Infrastructure Program (Program) provision in WRDA authorizes a $40,000,000 program for water resources projects, "as identified by the Texas Water Development Board." The board will forward a list of eligible SOIs to the U.S. Congress. An SOI is eligible if the project is listed in the State Water Plan and the Regional Water Plan, and if the project has not received funding under WRDA or been previously listed under WRDA. In the event sufficient funds are appropriated, the funds will be distributed directly from the federal government to the political subdivision. The funding will cover 75% of the cost of the project. The funding is also available for discrete portions of an identified project.

Intent and Purpose of Program

The intent of the Program is to provide federal support for the implementation of water management strategies recommended in "Water for Texas - 2007," the Texas State Water Plan and not otherwise authorized under WRDA. The Program will allow the USACE to directly support projects implementing the water management strategies. The funding is also available for discrete portions of an identified project.

The Program offers assistance "in the form of planning, design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Texas, including projects for water supply, storage, treatment and related facilities, environmental restoration, and surface water resource protection and development, as identified by the Texas Water Development Board." The board will categorize the eligible SOIs based on the activity to be funded. The board's objective is to facilitate construction of projects or discrete increments of projects that are being implemented to meet near term water supplies. Near term water supplies means those that will meet project needs for 2020 as identified in the State Water Plan.

Funding Limitations

The $40,000,000 authorized in WRDA is dedicated to a cost-sharing program wherein the federal share of the cost of the project shall be 75%, which may be provided in the form of grants or reimbursements of project costs. The non-federal share of 25% may be provided in the form of materials and in-kind services, including planning, design, construction and management services, as determined to be compatible with, and necessary for, the project. Therefore, design work carried out before the date of the project funded under WRDA may be credited toward the non-federal share. Additionally, the non-federal share may be in the form of a credit for land, easements, rights-of-way, and relocations. Fuller details on eligibility for the non-federal cost-share will be available upon the release of USACE implementation guidance for the Program. Finally, the eligible applicant may apply for funding of the non-federal 25% share through one of the board's loan funding programs.

General Requirements

Political subdivisions otherwise eligible for funding from the board should submit an SOI to the address below no later than 5:00 p.m. on Friday, April 25, 2008. Responses should be limited to ten pages, excluding necessary maps.

The SOI shall contain the following information:

1. Name and address and geographical jurisdiction of the project sponsor(s);

2. Name, phone number and email address of main points of contact for the sponsor;

3. Name of project as identified in the State Water Plan, "Water for Texas - 2007," and in the applicable Regional Water Plan identified by page number references to the project proposed for funding; and the project shall meet a need for 2020.

4. Description of the physical boundaries of the project and the geographic area and region to be served by the project; the congressional district in which the project is located;

5. Brief description of overall project and estimated total cost of entire project;

6. Brief description of the portion of the project for which federal funding is requested under the Program, and estimated cost, date of the cost estimate, and estimated time to completion of the project;

7. A resolution from the governing body of the political subdivision approving the SOI for federal funds.

If, due to the schedule for governing body meetings, the applicant cannot provide a resolution by the April 25, 2008 deadline for SOI, then the board will accept:

(a) a letter from the chair of the governing body or

(b) a letter from the chief executive of the governing body stating the intent to request a resolution at the next regularly scheduled meeting of the governing body.

Submission of SOI

The SOI shall be submitted by U.S. Mail to:

Mr. Dave Mitamura

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

(512) 463-7965

The SOI must be received at the above address by 5:00 p.m., Friday, April 25, 2008.

This Request for Statements of Interest has been reviewed by the TWDB's legal counsel and is in compliance with applicable state and federal laws.

TRD-200801408
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Filed: March 12, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).